

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 471

THE CITY OF GREENWOOD, MISSISSIPPI,
PETITIONER,

vs.

WILLIE PEACOCK, ET AL.

No. 649

WILLIE PEACOCK, ET AL., PETITIONERS,

vs.

THE CITY OF GREENWOOD, MISSISSIPPI.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., FEBRUARY 10, 1966

*Printed record received
in Clerk's Office 2/21/66*

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RECORD—Filed September 17, 1964

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[fol. 1]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 21655

Criminal Action

WILLIE PEACOCK, et al., Appellants,

vs.

CITY OF GREENWOOD, MISSISSIPPI, Appellee.

DESIGNATION OF RECORD—Filed August 13, 1964

Now comes the appellants and request that the following designated portions of the record be printed:

1. A single petition for removal
(all petitions being the same)
2. Motion to remand
3. Amending complaint
4. Order on motion to remand
5. Notice of appeal

Smith, Waltzer, Jones & Peebles, By Jack Peebles,
1006 Baronne Building, New Orleans, Louisiana,
Attorneys for Appellants.

IN UNITED STATES COURT OF APPEALS

APPELLEE'S DESIGNATION OF ADDITIONAL PORTION OF RECORD
TO BE PRINTED—Filed August 19, 1964

Comes the appellee and requests that the following portion [fol. 2] of the record be printed in addition to the portions thereof designated by the appellant in his designation dated August 13, 1964:

1. The memorandum opinion on motion to remand rendered June 17, 1964, by United States District Judge Claude F. Clayton.

Respectfully submitted,

Lott and Sanders, By Hardy Lott, Aven Building,
Greenwood, Mississippi, Attorneys for Appellee.

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
Criminal Action No. GCR6414

WILLIE PEACOCK, et al., Petitioners,
vs.
CITY OF GREENWOOD, MISSISSIPPI, Respondents.

Appearances:

For Petitioners: Hon. Jack Peebles, Smith, Waltzer,
Jones & Peebles, 1006 Baronne Building, New Orleans,
Louisiana.

For Respondents: Hon. Arnold F. Gwin, Lott &
Sanders, Box 725, Greenwood, Mississippi.

Appeal from the District Court of the United States for the Northern District of Mississippi, Greenville Division to the United States Court of Appeals for the Fifth Circuit.

[fol. 3]

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF MISSISSIPPI

Number G C 6413

Civil Action

WILLIE PEACOCK, Petitioner,

VERSUS

CITY OF GREENWOOD, MISSISSIPPI, Respondent.

PETITION FOR REMOVAL BY PETITIONER WILLIE PEACOCK—
Filed April 3, 1964

To the Judge, United States District Court, Northern
District of Mississippi:

The petition of Willie Peacock, respectfully shows:

I.

On March 31st, 1964 petitioner was arrested in Greenwood, Mississippi and subsequently charged with a violation of Mississippi Code Section 2296.5, by Obstructing Public Streets and is to be tried on said charge in the City Court, Greenwood, Mississippi on April 3rd, 1964.

II.

Petitioner is a member of the Student Non Violent Coordinating Committee affiliated with the Conference of Federated Organizations, both Civil Rights Groups and

was at the time of the arrest engaged in a voter registration drive in Leflore County, Mississippi, assisting Negroes to register so as to enable them to vote as protected under the Federal Constitution and the Civil Rights Act of 1960, being 42 USCA 1971 et seq.

[fol. 4]

III.

Petitioner as a citizen of the United States cannot enforce his rights under the first and 14th amendments of the Federal Constitution to be free in speech, to petition and to assemble; is denied the equal protection of the Laws, the privileges and immunities of the Laws and due process of Laws, inasmuch as among other things was arrested, charged and is to be tried under a state statute that is vague, indefinite and unconstitutional on its face; is unconstitutionally and arbitrarily applied and used, and is enforced in this instance as a part and parcel of the unconstitutional and strict policy of racial segregation of the State of Mississippi and the City of Greenwood.

IV.

Because of the above, petitioner, who is not guilty of the crime charged, should one be held defined by the statute, is thereby denied and/or cannot enforce in the Courts of the State of Mississippi the rights he possesses' providing for the equal rights of citizens in the United States, nor can he act under authority of the aforementioned provisions of the Federal Constitution and 42 USCA 1971 providing for equal protection and equal rights, all as set forth as grounds for removal of this cause under 28 USCA 1443.

V.

This Court has jurisdiction of this cause under the aforesaid 28 USCA 1443 and 28 USCA 1446 and petitioner is [fol. 5] entitled to and desires the removal of this prosecution to this Court. This petition is filed in advance of trial.

Wherefore, petitioner prays that this prosecution be removed according to law and that all State Court proceedings be stayed pending further orders of this Court.

Benjamin E. Smith, Bruce C. Waltzer, Jack Peebles,
of the Firm Smith, Waltzer, Jones & Peebles, 1006
Baronne Building, New Orleans, Louisiana, 525-
4361.

Duly sworn to by Jack Peebles, jurat omitted in printing.

[fol. 6]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. G C 6413

WILLIE PEACOCK, WILLIS WRIGHT, ROBERT BASS, JOSEPH
ANTHONY GAENSTEN, RICHARD FREY, JAMES BROWN,
MATTHEW HUGHES, FLORA GEORGE, ALBERTA STEWART,
LAURA GEORGE, FRED HARRIS, ALVIN PACKARD, DOROTHY
HIGGINS, and WILL HENRY ROGERS, Petitioners,

VS.

THE CITY OF GREENWOOD, MISSISSIPPI, Respondent.

MOTION TO REMAND—Filed April 8, 1964

Respondent, the City of Greenwood, Mississippi, in the above numbered cause, hereby moves the Court for an order remanding this cause, and jurisdiction of each of the petitioners therein, viz.: Willie Peacock, Willis Wright, Robert Bass, Joseph Anthony Gaensten, Richard Frey, James Brown, Matthew Hughes, Flora George, Alberta Stewart, Laura George, Fred Harris, Alvin Packard,

Dorothy Higgins, and Will Henry Rogers, to the Police Court of the City of Greenwood, Leflore County, Mississippi, on the ground that the cause was removed improvidently and is not within the jurisdiction of this Court, in that this action is not a civil rights case within 28 U.S.C., Sec. 1443, under which statute it was removed; and that the Court further order the payment by defendants, petitioners for removal, to the respondent, the City of Greenwood, [fol. 7] of all costs and disbursements incurred by reason of the removal proceedings.

Movant, the City of Greenwood, says that the petitions for removal show on their faces that this Court is without jurisdiction; but if this Court holds this not to be so, then answering the petitions for removal, each of which is identical and which bears the same cause number, movant would show unto the Court the following, to-wit:

1. Movant admits the allegations of paragraph number 1 of said petitions for removal.
2. Movant denies the allegations of paragraph number 2 of said petitions, having no knowledge as to their truth, but movant demands strict proof thereof.
3. Movant denies all the allegations of paragraph number 3 of said petitions.
4. Movant denies all the allegations of paragraph number 4 of said petitions.
5. Movant denies all the allegations of paragraph number 5 of said petitions, and denies that petitioners are entitled to have this cause removed, or any relief therein prayed for.

Arnold F. Gwin, Counsel for The City of Greenwood, Mississippi, Post Office Box 725, Greenwood, Mississippi.

[fol. 8]

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

AMENDING COMPLAINT—Filed April 28, 1964

The supplemental and amending complaint of the original petitioners herein with respect shows:

1.

That through error this action was inaccurately styled, numbered and docketed as "Willie Peacock, et al., vs. City of Greenwood; Civil Action, Docket No. G C 6413", whereas in fact it should have been styled "City of Greenwood vs. Willie Peacock, et al.; Criminal Action" and docketed on the criminal docket of this Court.

2.

On April 8, 1964 this Court granted petitioners the right, on their oral motion made through their counsel Benjamin Smith, to revise their complaint in the above particular.

3.

That this action as a removed criminal prosecution should be amended with leave of Court as granted.

4.

That petitioners desire to strike the name "Congress of Racial Equality" and substitute therefor the name "Student Non-Violent Coordinating Committee" in paragraph II of petitioners' original complaint.

Wherefore, petitioners pray that their original complaint [fol. 9] be amended and supplemented as above set forth.

Smith, Waltzer, Jones & Peebles, By Jack Peebles,
1006 Baronne Building, New Orleans, Louisiana,
Attorneys for Petitioners.

Duly sworn to by Jack Peebles, jurat omitted in printing.

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

ORDER—April 29, 1964

Let this supplemental and amending complaint be filed according to law and:

- (1) That the caption be altered and amended to style this action as "City of Greenwood vs. Willie Peacock, et al., Criminal Action," and let same be [fol. 10] docketed as a criminal matter on the criminal docket and assigned a criminal number;
- (2) Let the name "Congress of Racial Equality" be *stricken* from paragraph II of the original complaint and the name "Student Non-Violent Coordinating Committee" substituted therefor.

Tupelo, Mississippi this 29th day of April, 1964.

Claude F. Clayton, District Judge.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. GCR6414

THE CITY OF GREENWOOD, MISSISSIPPI,
versus
WILLIE PEACOCK, et al.

MEMORANDUM OPINION ON MOTION TO REMAND—
June 17, 1964

Fourteen petitions for removal of criminal prosecutions pending in the Police Court of the City of Greenwood,

Mississippi were filed in this court in one jacket file as a matter of convenience and economy to the petitioners. These petitions were originally captioned as if a new civil case was being instituted and the jacket file was originally given a docket number on the civil docket of this court. However, after the cases were filed and on the request and petition of those removing here, the caption was ordered changed to that shown above and docketed on the criminal docket of the court.

The City of Greenwood filed a motion to remand, as well as an answer on the merits, and its motion to remand is now for consideration and disposition by the court on briefs of the parties. The briefs are directed to the face [fol. 11] of the papers only and the matter will be thus considered.

After the original documents were filed, an order was entered on a petition for a writ of habeas corpus directing the Marshal of the Northern District of Mississippi to take the defendant petitioners into his custody, but without prejudice to the rights of the City of Greenwood to press its motion to remand.

On the same day that the aforementioned order was entered, this court entered an order, on informal application of the defendant petitioners, fixing bail at from \$100 to \$200 each for all but one of them and the other defendant petitioner, Fred Harris, was released to the custody of his parents and allowed to remain in their custody pending further order or notice from this court. All of the other defendant petitioners promptly posted bail bonds which were approved and they were released on that bail.

The procedural basis for the removal of these cases to this court is found in § 1443, United States Code, which reads as follows:

"Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

"(1) Against any person who is denied or cannot enforce in the courts of such state a right under any [fol. 12] law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

"(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

The petitions by which jurisdiction of this court was invoked were *verified only by counsel and not yet has any copy of any state court process, pleading or order been filed with this court*. These petitions each recite that the petitioner was arrested in Greenwood, Mississippi, and subsequently charged with the violation of Mississippi Code, § 2296.5, by obstructing public streets and is to be tried on said charge in the City Court of Greenwood, Mississippi. Each of these petitions also alleges that the petitioner is affiliated with a civil rights organization and that the petitioner was engaged in a voter registration drive in Leflore County, Mississippi, assisting Negroes to register so as to enable them to vote and contains conclusory allegations of rights under the First and Fourteenth Amendments and that the state statute under which the prosecutions were instituted is vague, indefinite and unconstitutional on its face.

In a case which involved a Negro who was tried for murder in the state court three times, convicted each time [fol. 13] and each time the state's highest court reversed, who removed his case, before a fourth trial, to the federal court on the basis of an earlier enactment of the statute with which this court is now concerned, on appeal which was then permitted on the denial of a motion to remand, even though finding that "the trials of the accused disclosed such misconduct on the part of administrative officers connected with these trials as may well shock all

who love justice * * *", held that the removal was erroneous and in doing so said:

"In each of these cases it was distinctly adjudged, in harmony with previous cases, that the words in Section 641 'who is denied or cannot enforce in the judicial tribunals of the state * * * any right secured to him by any law providing for the equal civil rights * * *' did not give the right of removal, unless the Constitution or the laws of the state in which the criminal prosecution was pending denied or prevented the enforcement in the judicial tribunals of such state of the equal rights of the accused as secured by any law of the United States. Those cases, as did the prior ones, expressly held that there was no right of removal under Section 641, where the alleged discrimination against the accused, in respect of his equal rights, was due to the illegal or corrupt acts of administrative officers, unauthorized by the Constitution or laws of the state, as interpreted by its highest court." *Kentucky v. Powers*, 201 U. S. 1, 50 L. Ed. 633, 5 Ann. Cas. 705 (1906).

In *Gibson v. Mississippi*, 162 U. S. 565 (1896) it was said:

"Whether a particular statute, which does not discriminate against a class of citizens in respect of their civil rights, is applicable to a pending criminal prosecution in a state court, is a question in the first instance, for the determination of that court, and its right and duty to finally determine such a question cannot be interfered with by removing the prosecution from the state court, except in those cases which, by express enactment of Congress, may be removed for trial into the courts of the United States. If that question involves rights secured by the Constitution and laws of the United States, the power of ultimate re-

view is in this court whenever such rights are denied by the judgment of the highest court of the state in which the decision could be had. As the judges of the state courts take an oath to support the Constitution of the United States as well as the laws enacted in [fol. 15] pursuance thereof and as that Constitution and those laws are of supreme authority, anything in the Constitution or laws of any state to the contrary notwithstanding, upon the state courts, equally with the courts of the union, thus the obligation to guard, enforce and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them, and if they fail therein, and withhold or deny rights, privileges or immunities secured by the Constitution and laws of the United States, the party aggrieved may bring the case from the highest court of the state in which the question could be decided to this court for final and conclusive determination."

The rule followed in the *Powers* case and in the *Gibson* case has never been reversed, or distinguished, so far as counsel have pointed out or so far as this court has been able to determine. For example, in *The City of Birmingham, Alabama v. Crosskey*, 217 F. Supp. 947 (1963), it was held:

"It is only where state legislation exists, interfering with the person's right of defense, that such person can have the cause removed. (D. C. N. J. 1930) *State of New Jersey v. Weinberger*, 38 F. 2d 298. A case [fol. 16] may not be transferred unless some substantive or procedural rule of state law, as distinguished from actions of officials in disregard of state law, deprives a defendant of equal civil rights. In re: *Hagwood(s) Petition*, (D. C. Mich. 1961), 200 F. Supp. 140."

In *Steele* the Superior Court of California, 164 F. 2d 781 (9 Cir. 1948) where the defendant was charged with a violation of a state statute on bookmaking, plead not guilty and filed a petition for removal under § 1443, United States Code, alleging that his constitutional rights of due process and under the Fourteenth Amendment and to be secure in his home against unreasonable search and seizure were violated and that the California procedure allowed unlawful evidence to be used against him, the district court refused removal and the Court of Appeals affirmed, saying:

"If in the procedure adopted by the California courts and by it *equally* applied to all citizens of the United States, there lurks a violation of other rights guaranteed by the Fourteenth Amendment, that fact alone is not sufficient to justify removal to the U. S. District Court. *We hold that in order to authorize removal as provided by Section 1443, a violation of the equal pro-[fol. 17] tection clause of the Fourteenth Amendment must be shown.* Some equal civil rights must be denied, such as discrimination against a particular race." (Court's emphasis.)

It seems, at this time, well settled then that 28 U. S. C., § 1443 authorizes removal of a criminal case from a state court to a federal court only when the Constitution or laws of the state deny or prevent the enforcement of equal rights secured to one by the Constitution or laws of the United States, and not where the equal rights of citizens are recognized or are not denied by the Constitution or laws of the state. It is only when hostile state constitutional provision or state legislation exists which interferes with a person's right of defense that the case can properly be removed to federal court. There is no right to removal where the alleged denial of, or inability to enforce any such right results from the corrupt, illegal or unauthorized administration of a state Constitution or laws which are not discriminatory and apply to all persons alike. See

76 C. J. S., *Removal of Causes*, § 94; 45 A.M.Jur., *Removal of Causes*, § 109 and *State of Arkansas v. Howard*, 218 F. Supp. 626 (ED Ark. 1963).

There is a line of cases, consistent with the foregoing, which does permit removal under § 1443 (or its predecessors) where there is a state law which shows on its face that it discriminates in violation of the Federal Constitution or Federal law or that it denies rights guaranteed under [fol. 18] the Federal Constitution of Federal law. See, for example, *Strauder v. West Virginia*, 100 U. S. 303, 25 L. Ed. 664. But this is not the case here, as will be seen.

§ 2296.5, Mississippi Code Annotated, 1942, as amended, provides:

"1. It shall be unlawful for any person or persons to wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, alley, road, or other passageway by impeding, hindering, stifling, retarding or restraining traffic or passage thereon, and any person or persons violating the provisions of this act shall be guilty of a misdemeanor * * *."

The phrase "any person or persons" encompasses people of all races and of all stations. It is not directed to any classification of people by reason of race or because of any other criterion. It is not unconstitutional under the equal protection clause of the Fourteenth Amendment of the Federal Constitution and it is of no consequence with respect to the issue now before this court as to how this law was, is, or will be administered—fairly, unfairly, equally, discriminatorily, corruptly, harshly or humanely.

In spite of what seems to be settled law, however, counsel for these removing petitioners earnestly and with skill urges that a solution of the problem now before this court must be approached "in the spirit of the new vitality [fol. 19] brought to the Fourteenth Amendment by the recent decisions" so as to overrule the authority heretofore cited. But, until the Court of Appeals for this circuit or

the Supreme Court speaks to the contrary, this court is bound to follow the law as it exists at this time.

And counsel for petitioners urges that since the petitions allege that these removing parties were engaged in a voter registration drive that this is action under color of authority of both 42 U. S. C. 1971 and the Federal Constitution and that thus they are given rights which they cannot enforce in the state courts and are thereby entitled to removal under § 1443. Petitioners allege that they were arrested for wilfully obstructing the public streets of Greenwood; that they are members of a civil rights organization engaged in advancing rights of Negroes and were "at the time of arrest engaged in a voter registration drive * * *" assisting Negroes to register so as to enable them to vote. Petitioners do not state that they themselves were attempting to register to vote nor do they state what was being done by them while they were "engaged in a voter registration drive". They do not state any specific acts undertaken pursuant to their general engagement in a voter registration drive, other than that they were arrested for blocking a public street. They do not state that they were acting in furtherance of any rights personal to them under 42 U. S. C. 1971, but the petitions simply allege "nor can he (petitioner) act under authority [fol. 20] of the aforementioned provisions of the Federal Constitution and 42 U. S. C. A. 1971 providing for equal protection and equal rights * * *". They say that this, without more, entitled them to remove a criminal case against them for wilfully obstructing the free use of a public way and base this contention partly on § 1443 (2), which authorizes removal of criminal prosecution.

" * * *

" (2) for any act under color of authority derived from any law providing for equal rights * * *."

There is nothing on the face of the language of § 1971 which would give petitioners (or any other individual) any

authority or even any right, to assist others to vote, or to engage in a voter registration drive.

Admittedly none of the cases cited by petitioners fit the situation presented by the motion to remand when it is viewed in the light of § 1443 (1). But, with respect to (2) of that section, counsel cites the case of *Hodgson v. Millward*, 12 Fed. Cas. No. 6568, 3 Grant cases, 418 (C. C. Pa. 1863) as the only case that could be found under § 1443 (2). But, this case involves "the fifth section of the Act of 3rd March, 1863 (12 Stat. 756)". That section of that law provides for the removal of an action against federal officers for any tortious acts committed by them during the "rebellion" under color of authority of a presidential order or act of Congress. There is nothing in that law pertaining to equal rights or the removal of cases involving [fol. 21] equal rights. And this case illustrates the point that "color of authority" does not mean the act of a mere individual by holding as follows:

"For the purposes of this case it is enough to say, that an officer, acting in good faith under a warrant purporting to come from his superiors whom he is bound to obey, is acting under 'color of authority'".

Petitioners were not and do not claim to have been federal officers acting under color of authority of any warrant or other document which they were bound to follow. Hence, the *Hodgson* case has no application here.

In summary, since no discriminatory state constitutional provision or state statute are claimed, petitioners must look to the state courts for the protection of any rights they might have under the Constitution and laws of the United States. If any such rights are withheld or denied, they may take their case to the higher courts of Mississippi and then to the Supreme Court of the United States for "final and conclusive determination".

For the reasons stated, it is concluded that the cases were improvidently removed and that this court is without

jurisdiction. An order will be entered sustaining the motion of the City of Greenwood to remand and remanding all the cases to the Police Court of that city for trial or other disposition according to the laws of the State of Mississippi.

[fol. 22] This the 17th day of June, 1964.

Claude F. Clayton, District Judge.

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

ORDER ON MOTION TO REMAND—June 17, 1964

For the reasons shown in the Memorandum Opinion released this date, it is

Ordered, that:

1) The motion to remand this case shall be and the same is sustained.

2) This cause shall be and is hereby remanded to the Police Court of the City of Greenwood.

3) The following defendants, now at liberty on bail in amounts fixed by this court, bonds for which were posted in and approved by this court, are ordered and directed to surrender themselves to the Chief of Police (Marshal) of the City of Greenwood, Mississippi, no later than ten days from the date of this order:

Willie Peacock
Dick Frey
Dorothy Higgins
Flora George
Laura George
Will Henry Rogers
[fol. 23] Matthew Hughes

Alberta Stuart
Willis Wright
James Brown
Robert Bass
Alvin Packard
Tony Gaensten

4) Upon the surrender of a defendant as required by paragraph 3), hereof, all liability of that defendant and sureties on his bail bond shall thereupon be extinguished, but, otherwise the bail bond of each defendant shall remain in full force and effect.

5) The defendant, Fred Harris, and his parents into whose custody he was released before removal here, are ordered to report to the Chief of Police (Marshal) of the City of Greenwood, Mississippi, not later than ten days from the date of this order.

6) The Clerk of this Court is directed to serve promptly on each of said defendants and the parents of the defendant, Fred Harris, a certified copy of this order by certified mail to note such service on the docket.

This the 17th day of June, 1964.

Claude F. Clayton, District Judge.

[fol. 24]

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed June 24, 1964

Now Into Court come the complainants herein and on showing to the Court that they are aggrieved of the Court's Order remanding this case for State trial and that such order is contrary to the law and evidence; and that they are entitled to and desire to appeal said order of remand to the United States Court of Appeal, Fifth Circuit;

hereby gives notice that they do, by this Notice appeal to the United States Court of Appeal, Fifth Circuit.

Smith, Waltzer, Jones & Peebles, Attorneys for Appellants, 1006 Baronne Building, New Orleans, Louisiana, By Jack Peebles.

[fol. 25] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 26]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
Number 21655—Criminal Action

WILLIE PEACOCK, et al., Petitioners,

vs.

CITY OF GREENWOOD, MISSISSIPPI, Respondent.

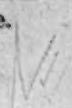
ORDER—June 23, 1964

Considering the foregoing application for a stay of the order issued by the United States District Court, Northern District of Mississippi under Docket No. GCR6413,

It Is Ordered that a stay issue, staying the enforcement of the remand order issued by the United States District Court, Northern District of Mississippi under Docket No. GCR6413 on June 17, 1964, until a hearing can be had on the application for a stay of the remand pending appeal of the remand order, subject however, to further orders of this Court.

New Orleans, Louisiana this 23rd day of June, 1964.

Elbert P. Tuttle, United States Circuit Judge, Warren L. Jones, United States Circuit Judge, John Minor Wisdom, United States Circuit Judge.



[fol. 27]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 21655

WILLIE PEACOCK, et al., Appellants,
versus

THE CITY OF GREENWOOD, MISSISSIPPI, Appellee.

Appeal from the United States District Court for the
Northern District of Mississippi

ORDER DENYING MOTION OF APPELLEE TO DISMISS APPEAL—
Filed July 22, 1964

Before Tuttle, Chief Judge, and Brown and Bell, Cir-
cuit Judges.

By the Court:

It Is Ordered that the motion of appellee to dismiss the
appeal in the above entitled and numbered cause be, and
the same is hereby Denied.

[File endorsement omitted]

[fol. 28]

No. 21655

WILLIE PEACOCK, et al.,
versus

THE CITY OF GREENWOOD, MISSISSIPPI.

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
March 23, 1965

On this day this cause was called, and after argument
by Jack Peebles, Esq., for appellants, and Arnold F.
Gwin, Esq. and Hardy Lott, Esq., for appellee, was submit-
ted to the Court.

[fol. 29]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 21655

WILLIE PEACOCK, et al., Appellants,

versus

THE CITY OF GREENWOOD, MISSISSIPPI, Appellee.

Appeal from the United States District Court for the
Northern District of Mississippi

OPINION—June 22, 1965

Before WOODBURY,* WISDOM, and BELL, Circuit Judges.

Bell, Circuit Judge: This cause arises under the removal statute, 28 USCA, § 1443. The appeal is from an order of the District Court sustaining the city's motion to remand fourteen criminal cases to the city police court. [fol. 30] The petitions for removal alleged that appellants were arrested in Greenwood, Mississippi, and charged with obstructing public streets in violation of § 2296.5, Mississippi Code of 1942.¹ Removal jurisdiction was predicated

* Of the First Circuit, sitting by designation.

¹ In pertinent part:

"1. It shall be unlawful for any person or persons to wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, alley, road, or other passageway by impeding, hindering, stifling, retarding or restraining traffic or passage thereon, and any person or persons violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00) or by confinement in the county jail not exceeding six (6) months, or by both such fine and imprisonment." Miss.Laws, 1960, Ch.244.

on both paragraphs (1) and (2) of § 1443.² It was alleged that appellants were members of the Student Non-Violent Coordinating Committee, an organization affiliated with the Conference of Federated Organizations, both civil rights groups; and that at the time of the arrests, they were engaged in a voter registration drive assisting Negroes to register and secure the right to vote as guaranteed by the Federal Constitution, and the Civil Rights Act of 1960, 42 USCA, § 1971 et seq. Appellants further alleged that the Mississippi statute in question was vague, indefinite, and unconstitutional, both on its face and as [fol. 31] applied, and that their arrests and trial under it would prevent them from exercising their First and Fourteenth Amendment rights to free speech, assembly, and petition. Finally, it was said that appellants were being denied equal protection of the laws and that the statute was being enforced against them as part and parcel of a policy of racial segregation maintained by the State of Mississippi and the City of Greenwood.

Upon motion by the city of Greenwood, the District Court remanded each case on the ground that § 1443 afforded no jurisdictional basis for removal. With respect to jurisdiction claimed under paragraph (1) of § 1443, the District Court proceeded on the theory that the Supreme Court in several cases³ ending with *Kentucky v.*

² "Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

"(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

"(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

³ *Strader v. West Virginia*, 1879, 100 U.S. 303, 25 L.Ed. 664; *Virginia v. Rives*, 1870, 100 U.S. 313, 25 L.Ed. 667; *Neal v. Delaware*, 1881, 103 U.S. 370, 26 L.Ed. 567; *Bush v. Kentucky*, 1883, 107 U.S. 110, 1 S.Ct. 625, 27 L.Ed. 354; *Gibson v. Mississippi*, 1896, 162 U.S. 565, 16 S.Ct. 904, 40 L.Ed. 1075.

Powers, 1906, 201 U.S. 1; 50 L.Ed. 633, restricted that paragraph to situations where the state constitution or statutes, as distinguished from corrupt and illegal acts of state officials, denied or prevented enforcement of the equal rights of the accused. In effect, these decisions of the Supreme Court were construed as limiting § 1443(1) to cases where the denial or inability to enforce equal rights appeared on the face of the state constitution or statutes, rather than in their application.

Following the decision of the District Court,⁴ we decided *Rachel v. State of Georgia*, 5 Cir., 1965, — F.2d —, [fol. 32] slip opinion dated March 5, 1965. The *Rachel* case disposes of the two questions under § 1443(1) raised by this appeal: (1) whether the brief allegations of the removal petitions were sufficient as a matter of pleading to allege a cause for removal under § 1443(1); and (2) whether § 1443(1) allows removal where a state statute, though valid and non-discriminatory on its face, is applied in violation of some equal right of the accused.⁵ The additional question presented by this appeal is whether paragraph (2) of § 1443 also affords a basis for removal under the facts of this case.

I.

From the *Rachel* decision and its application of the rules of federal notice type pleading to removal petitions, it is

⁴ See also *City of Clarksdale v. Gertge*, N.D.Miss., 1964, 237 F.Supp. 213, now pending on appeal in this court as case No. 22,323.

⁵ The District Court did not reach the question of whether the statute was unconstitutional by reason of being vague and indefinite. Neither do we for it goes without saying that prosecution under such a statute, standing alone and without discriminatory overtones, would not show a denial or inability to enforce equal civil rights within the terms of either paragraph of § 1443.

The criticism by the District Court based on verification of the petitions by counsel instead of petitioners, and of the failure to file state court pleadings, process and orders in the federal court are not regarded as questions presented since these criticisms were no part of the basis for remand.

plain that the petitions here are adequate as a matter of pleading to set forth the contention that Mississippi Code § 2296.5 is being applied so as to deny appellants their rights under the equal protection clause of the Fourteenth Amendment. Appellants allege that they are being prosecuted for obstructing public streets in violation of Mississippi Code § 2296.5, that they are being denied equal [fol. 33] protection of the law, and that the Mississippi statute in this instance is being enforced as part of a policy of racial segregation maintained by the state and city. It is a fair inference that they contend that the statute is being invoked discriminatorily to harass and impede appellants in their efforts to assist Negroes in registering to vote. It may be on remand that proof of these allegations will be insufficient. However, if these allegations are true, a denial of equal protection of the law would be established.

Under the precedent of *Rachel* and the authorities therein cited having to do with notice type pleading, we hold that the removal petitions are adequate at this stage of the proceeding to set forth a claim for removal based on the proposition that appellants are denied or cannot enforce in the courts of Mississippi their rights under the equal protection clause of the Fourteenth Amendment by virtue of the discriminatory application of Mississippi Code § 2296.5. We proceed therefore to consider whether such a claim for removal is included within the scope of § 1443(1).

II.

It is settled that the equal protection clause of the Fourteenth Amendment constitutes a "law providing for the equal civil rights of citizens of the United States" within the meaning of § 1443(1). *Strauder v. West Virginia*, 1879, 100 U.S. 303, 26 L.Ed. 664 (by implication); *Steele v. Superior Court*, 9 Cir., 1948, 164 F.2d 781.

The court in *Steele* suggested, and it is our view, that not every violation of the equal protection clause will justify removal, but only those violations involving discrimination based on race. This limitation comports

with the historic purpose of § 1443. Appellants also allege deprivation of rights under the due process clause of the Fourteenth Amendment and under the First Amendment as incorporated therein. We hold, however, that the due process clause is not a law providing for *equal* rights within the contemplation of the removal statute. This view accords with the holding in *Steele* and in *New York v. Galamison*, 2 Cir., 1964, — F.2d —, cert. den., — U.S. —, where the court said:

“When the removal statute speaks of ‘any law providing for equal rights,’ it refers to those laws that are couched in terms of equality, such as the historic and the recent equal rights statutes, as distinguished from laws, of which the due process clause and 42 U. S. C. § 1983 are sufficient examples, that confer equal rights in the sense, vital to our way of life, of bestowing them upon all.”

The removal statute contemplates those cases that go beyond a mere claim of due process violation; they must focus on racial discrimination in the context of denial of equal protection of the laws. The allegation of appellants that the Mississippi statute is being employed to thwart their efforts to assist Negroes to register to vote is sufficient to meet this test. It is a claimed denial of an equal civil right based on race.

The difficult question is whether removal jurisdiction under § 1443(1) is limited to situations where the denial [fol. 35] or inability to enforce rights under the equal protection clause appears from the face of the state constitution or statutes, or whether that section also encompasses cases where the deprivation of equal rights arises from the application of an otherwise valid statute. On this question also, however, we feel that the City of Greenwood is foreclosed by the reach of *Rachel v. State of Georgia supra*.

Rachel involved prosecutions of sit-in demonstrators under the Georgia anti-trespass statute, Ga. Code § 26-3005. The Georgia statute, like the Mississippi statute here, was

non-discriminatory on its face, and only through application could it operate to deny equal civil rights. The law providing for equal civil rights was the Civil Rights Act of 1964, as construed by the Supreme Court in *Hamm v. City of Little Rock*, 1964, — U.S. —, — S.Ct. —, 13 L.Ed.2d 300, to retroactively bar state prosecutions for peaceful sit-in demonstrations. The removal petitions in that case were construed as alleging, in effect, that Ga. Code § 26-3005 was being applied to appellants in violation of the Civil Rights Act of 1964 (and therefore in violation of the Supremacy Clause). We held that as thus construed the removal petitions stated a good claim for removal under § 1443(1). It was as if the Civil Rights Act had placed a gloss on the Georgia statute to the effect that it was not to be applied in peaceful sit-in demonstrations.

Thus, *Rachel* allowed removal based on the alleged application of a state statute contrary to an Act of Congress, while the instant case involves the alleged application of a state statute contrary to the equal protection clause. The rationale of *Rachel* is inescapably applicable here, [fol. 36] since both cases involve the denial of equal rights through statutory application, rather than through some infirmity appearing on the face of the state statute.

The City of Greenwood relies on the series of Supreme Court cases ending with *Kentucky v. Powers*, *supra*, in support of its contention that removal will not lie unless the deprivation of equal rights stems from the face of state legislation. See cases cited note 3, *supra*. The District Court took this view in ordering the cases remanded. The question is not without difficulty but we are constrained to a broader reading of these decisions.

The Supreme Court first had occasion to delineate the scope of § 1443(1) in *Strauder v. West Virginia* and *Virginia v. Rives*, decided the same day. In *Strauder*, a West Virginia statute limited jury service to "white male persons," and a Negro charged with murder sought removal on the grounds that this statute denied him in the courts of West Virginia his rights under the equal protection clause. The court held that a good claim for removal

under the predecessor of § 1443(1) had been stated. In *Virginia v. Rives*, although the Virginia statute was non-discriminatory, the allegation was that state officials excluded Negroes when selecting juries. Here removal was disallowed. The court emphasized that the denial of equal rights must appear in advance of trial. In view of this requirement, the court stated that § 1443(1) was limited "primarily, if not exclusively" to denial of rights "resulting from the Constitution or laws of the State, rather than a denial first made manifest at the trial of the case." As for administrative deprivations of protected rights by state [fol. 37] officials acting in violation of state law, "it ought to be presumed the [state] court will redress the wrong." The remaining cases relied on—*Neal v. Delaware*, *Bush v. Kentucky*, *Gibson v. Mississippi*, and *Kentucky v. Powers*—all involved administrative exclusion of Negroes from juries, and all hold in accordance with *Virginia v. Rives* that § 1443(1) affords no basis for removal under such circumstances.

In our view, these cases establish only that, in order to establish removal jurisdiction, the denial of equal rights through the systematic exclusion of Negroes from grand and petit juries must result from state legislative or constitutional provisions. The stated rationale for this rule was that the deprivation of protected rights had to be shown in advance of trial. However, this reasoning gives way to the fact that the illegality of a grand jury indictment springing from systematic exclusion would be susceptible of proof prior to trial. The rationale was also advanced in these decisions that questions other than those arising from the terms of the statute should be left to state courts for vindication. This does not follow for state courts are bound under the Federal Constitution to protect a litigant from the loss of rights even in the case of express language in a state statute. In short, we do not read these cases as establishing that the denial of equal civil rights must appear on the face of the state constitution or statute rather than in its application where the alleged denial of rights, as here, had its inception in the arrest and charge. They dealt only with the systematic

exclusion question, a question which in turn goes to the very heart of the state judicial process, and federalism [fol. 38] may have indicated that the remedy in such situations in the first instance should be left to the state courts. We would not expand the teaching of these cases to include state denials of equal civil rights through the unconstitutional application of a statute in situations which are not a part of the state judicial system but which, on the contrary, arise in the administration of a statute in the arresting and charging process.

Thus, we find nothing in the prior decisions of the Supreme Court, nor in the language of § 1443 itself, to require limitation of that section to cases involving laws violative of equal rights on their face. We therefore hold that a good claim for removal under § 1443(1) is stated by allegations that a state statute has been applied prior to trial so as to deprive an accused of his equal civil rights in that the arrest and charge under the statute were effected for reasons of racial discrimination.

Of course, such allegations must be proved if they are challenged. Consequently, removal based on the misapplication of a statute may fail for want of proof. However, we deal here only with what allegations are sufficient to prevent remand without a hearing. Appellants allege that Mississippi Code § 2296.5 is being applied against them for purposes of harassment, intimidation, and as an impediment to their work in the voter registration drive, thereby depriving them of equal protection of the laws. We simply hold that these allegations entitle appellants to remove their cases to the federal court.* It follows that [fol. 39] the District Court erred in remanding these cases to the state court without a hearing, and we reverse and remand for a hearing on the truth of appellants' allegations.

* Proof of the allegations in this case would establish removal jurisdiction and *ipso facto* entitle appellants to dismissal of their prosecutions by the District Court. Failure of proof would require remand to the state court for trial.

III.

Appellants also sought removal under paragraph (2) of § 1443 on the ground that they were being prosecuted for acts done under color of authority derived from federal laws providing for equal rights. They alleged, as previously stated, that at the time of their arrests, they were engaged in a voter registration drive assisting Negroes to secure the right to vote as guaranteed by the Constitution and the Civil Rights Act of 1960, 42 USCA, § 1971 et seq. Again applying the philosophy of notice type pleading to the removal petitions, we construe them as alleging that appellants are being prosecuted for acts committed under color of authority of the equal protection clause and 42 USCA, § 1971. There is a complete absence of any allegation that appellants were acting in an official or quasi-official capacity. In essence, it is appellants' position that paragraph (2) of § 1443 authorizes removal by any person who is prosecuted for an act committed while exercising an equal civil right under the Constitution or laws of the United States. We cannot agree.

The Second Circuit recently had occasion to rule on the meaning of § 1443(2) in *New York v. Galamison*, Jan. 26, 1965, — F.2d —, cert. den., — U.S. —. There, removal was sought by civil rights demonstrators who were being prosecuted for various acts which had disrupted traffic to the New York World's Fair. The court affirmed [fol. 40] the District Court's order of remand. The demonstrators contended that they were being prosecuted for acts committed under color of authority of the equal protection clause, and 42 USCA, § 1981. The court, in an opinion by Judge Friendly, held that neither the equal protection clause nor § 1981 confers color of authority to perform the acts which the state alleged to be in violation of its laws of general application. The court stated:

"When the removal statute speaks of 'color of authority derived from' a law providing for equal rights, it refers to a situation where the lawmakers manifested an affirmative intention that a beneficiary of such a law should be able to do something and not

merely to one where he may have a valid defense or be entitled to have civil or criminal liability imposed on those interfering with him."

The Second Circuit expressly refrained from deciding whether § 1443(2) is limited to officers or persons acting in some way on behalf of government.

In *City of Clarksdale v. Gertge*, N.D. Miss., 1964, 237 F. Supp. 213, Judge Clayton reached the question pretermitted in *Galamison*, holding that from the generally accepted meaning of the phrase "color of authority," removal is not available under § 1443(2) unless the act for which the state prosecution is brought was done in at least a quasi-official capacity derived from a law providing for equal rights. This rationale was also the basis for the District Court's remand order in the present case. We agree with this construction.

[fol. 41] Paragraph (2) of § 1443 had its genesis in the Civil Rights Act of 1866, 14 Stat. 27, where the operative language allowed removal of suits and prosecutions "against any officer, civil or military, or other person, for any arrest or imprisonment, trespasses, or wrongs done or committed by virtue or under color of authority derived from this act . . ." or the Freedmen's Bureau legislation.⁷ This lan-

⁷ The first sentence of § 3 reads as follows:

"And be it further enacted, That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offences committed against the provisions of this act, and also, concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the State or locality where they may be any of the rights secured to them by the first section of this act; and if any suit or prosecution, civil or criminal, has been or shall be commenced in any State court, against any officer, civil or military, or other persons, for any arrest or imprisonment, trespasses or wrongs done or committed by virtue or under color of authority derived from this act or the act establishing a Bureau for the relief of Freedmen and Refugees, and all acts amendatory thereof, or for refusing to do any act

guage survived in substance until the 1948 revision when the statute was recast in its present form, with all reference to the categories of persons being deleted. The 1948 reviser's note disclaimed any intention to change the substance of the section,^{*} and in view of this, we feel that the more expansive language contained in the earlier enactments furnishes an appropriate guide to the true meaning of the section. *Cf. Madruga v. Superior Court*, [fol. 42] 1954, 346 U.S. 556, 560 & n. 12, 74 S.Ct. 298, 98 L.Ed. 290, 296.

Section 3 of the Civil Rights Act of 1866, the removal section, must be viewed in the context of the Act as a whole. Section 1, now 42 USCA, § 1981, declared Negroes to be citizens, conferred upon them various juridical rights of citizenship, such as the ability to make and enforce contracts, and guaranteed them the "full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to no other . . ." Section 2 made it a crime to deprive persons of rights secured by the act. Next followed the removal provision, now 28 USCA, § 1443. Sections 4-10 of the Act were devoted to compelling and facilitating the arrest and prosecution of violators of § 2. These sections, *inter alia*, authorized federal commissioners to appoint "suitable persons" to serve warrants, and allowed the persons so appointed to "summon or call to their aid the bystanders or posse comitatus of the proper county"

When § 1443(2) is viewed in this perspective, it is plain that Congress was primarily concerned with protecting federal officers engaged in enforcement activity under the

upon the ground that it would be inconsistent with this act, such defendant shall have the right to remove such cause for trial to the proper district or circuit court in the manner prescribed by the 'Act relating to habeas corpus and regulating judicial proceedings in certain cases,' approved March three, eighteen hundred and sixty-three, and all acts amendatory thereof. . . ."

^{*} See H. R. Rep. No. 308, 80th Cong., 1st Sess. A 134 (1947).

1866 Act and the Freedmen's Bureau Legislation. The use of the more inclusive "officer . . . or other person" language is explained by the need to protect by-standers, members of the posse comitatus and other quasi-officials as well. Moreover, the language "for any arrest or imprisonment, trespasses or wrongs . . . committed . . . under color of authority derived from this act" strongly suggests [fol. 43] enforcement activity. Had Congress intended to allow removal by someone merely exercising an equal civil right, as appellants contend, it would have been quite simple to use the term "any person," as indeed was used in § 1443(1), rather than the limited "officer . . . or other person."

Thus, we feel that the original language and context of § 1443(2) compel the conclusion that that section is limited to federal officers and those assisting them or otherwise acting in an official or quasi-official capacity. This conclusion is buttressed by the fact that appellants' construction of paragraph (2) would bring within its sweep virtually all the cases covered by paragraph (1), thereby rendering that paragraph of no purpose or effect. Paragraph (1) requires a denial or the inability to enforce equal rights in the state court. If paragraph (2) covers all who act under laws providing for equal rights, as appellants contend, this requirement could be avoided simply by invoking removal under the second paragraph. Paragraph (1) is an adequate vehicle for the protection and vindication of the rights of appellants, and we find no warrant for giving paragraph (2) the strained and expansive construction here urged.

We therefore hold that the portion of the judgment of the District Court which denied removal based on § 1443(2) was correct. However, the court erred in holding that the allegations of the petitions did not state a good claim for removal under § 1443(1), and this part of the judgment must be reversed and the case remanded to the [fol. 44] District Court for a hearing on the truth of these allegations.

Affirmed in part; Reversed in part; Remanded for further proceedings not inconsistent herewith.

[fol. 45]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1964

No. 21655

D. C. Docket No. G-C-6413—Criminal

WILLIE PEACOCK, et al., Appellants,

versus

THE CITY OF GREENWOOD, MISSISSIPPI, Appellee.

Before WOODBURY,* WISDOM and BELL, Circuit Judges.

JUDGMENT—June 22, 1965

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Mississippi, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed in part and reversed in part in accordance with the opinion of this Court; and that this cause be and is hereby remanded to the said District Court for further proceedings not inconsistent therewith;

It is further ordered and adjudged that the appellee, The City of Greenwood, Mississippi, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

June 22, 1965

* Of the first Circuit, sitting by designation.

Issued as Mandate: Jul 21 1965

Courts Costs:

Docketing Cause, etc.\$25.00

[fol. 46] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 47]

SUPREME COURT OF THE UNITED STATES

No., October Term, 1965

THE CITY OF GREENWOOD, MISSISSIPPI, Petitioner,

VS.

WILLIE PEACOCK, et al.

ORDER EXTENDING TIME TO FILE PETITION FOR
WRIT OF CERTIORARI—July 23, 1965

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 21, 1965.

Byron R. White, Associate Justice of the Supreme
Court of the United States.

Dated this 23rd day of July, 1965.

[fol. 48]

SUPREME COURT OF THE UNITED STATES

No. 471—October Term, 1965

THE CITY OF GREENWOOD, MISSISSIPPI, Petitioner,

v.

WILLIE PEACOCK, et al.

ORDER ALLOWING CERTIORARI—January 17, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is consolidated with Mr. 649 and a total of two hours is allotted for oral argument. The cases are set for oral argument immediately following No. 147.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 3]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. GCR 6435

CITY OF GREENWOOD,

vs.

DOROTHY WEATHERS, BERNICE COLE, ARANCE BROOKS,
Defendants-Petitioners.

PETITION FOR REMOVAL AND FOR OTHER RELIEF—
Filed July 23, 1964

To the Judge or Judges of the United States District Court
for the Northern District of Mississippi, Greenville
Division.

Your Petitioners respectfully petition this Court, pursuant to Title 28 U.S.C.A. 1443, et seq., for the removal of the above styled proceedings to this Court from the City Court for the City of Greenwood, Mississippi, and in support of this petition shows as follows:

Part A

A-1. Proceedings, as above entitled, are now pending and awaiting trial in the City Court for the City of Greenwood, Mississippi (File No. 54840, 54841, 54848); and are criminal proceedings in which Petitioners are defendants.

A-2. Petitioners are charged in said criminal proceedings with the alleged offense of Assault and Battery.

[File endorsement omitted]

[fol. 4] A-3. There is presently in operation in the State of Mississippi a movement sometimes known as the "Mississippi Project," sponsored by the Council of Federated Organizations (COFO), a Mississippi voluntary association;

A-4. COFO is composed of several organizations dedicated to and engaged in activities designed to achieve the full and complete integration of Negro citizens into the political and economic life of the State of Mississippi by means of improved educational opportunities and employment opportunities, and full and active participation in both the State and Federal franchise in the State of Mississippi;

A-5. The above-mentioned Mississippi Project consists, among other things, in inviting, training, and transporting to the State of Mississippi volunteer college students, teachers, social workers, ministers and law students to conduct voter registration schools; the conduct of peaceful assemblies, public protest and picketing; and the publication and distribution of literature, all intended and designed to advance the above-mentioned program in a peaceful, law abiding manner;

A-6. The above-mentioned "Mississippi Project" has been bitterly assailed, criticized and opposed by practically all persons in the Executive Branch in the government of Mississippi and the entire constabulary of the State of Mississippi and its political subdivisions has been alerted and encouraged by the Mississippi press, as well as by the governmental authorities of the State to oppose, and have opposed wherever possible, the entry into the State of civil rights volunteers and the conduct of the aforesaid activities within the State by COFO and its civil rights workers and volunteers;

A-7. At all times herein mentioned, Petitioners and those associated with Petitioners, were members, employees and/or volunteers actively engaged in the aforesaid COFO program for the aforesaid purposes;

[fol. 5] Part B

B-1. On July 16, 1964 in the City of Greenwood, Mississippi, at approximately Noon M., Petitioners, in company with several other COFO adherents, was engaged at the Leflore Co. Courthouse in the activity of peaceful picketing designed to encourage Negroes to register and vote.

B-2. The aforesaid conduct and activity of Petitioners was done in the exercise of rights guaranteed to Petitioners by the Federal Constitution and at no time did Petitioners interfere with or interrupt in any manner the lawful use of the street and sidewalk by others; nor the Petitioners in any manner litter the streets or disrupt traffic; nor did Petitioners engage in any other conduct prohibited by any valid law, statute or ordinance of the State of Mississippi or the City of Greenwood;

B-3. Notwithstanding the lawfulness of Petitioners' conduct as aforesaid, Petitioners were arrested and imprisoned by law enforcement officers of the City of Greenwood and Leflore Co.; have been charged as set forth, with bail fixed in the exorbitant amount of five hundred dollars in each case; and trial of Petitioners has been set for Friday, July 24, 1964 at 2 P.M. o'clock.

[fol. 6] Part C

C-1. The arrests and prosecutions of Petitioners have been and are being carried on with the sole purpose and effect of harassing Petitioners and of punishing them for and deterring them from the exercise of their constitutionally protected right to protest the conditions of racial discrimination and segregation which exist in all public aspects of life in Mississippi and which the State of Mississippi now maintains and seeks to enforce by statute, ordinance, regulations, custom, usage and practice.

C-2. Among recent legislative enactments evidencing Mississippi's policy to enforce racial discrimination and

segregation and to suppress all protest against such discrimination and segregation are Mississippi Code, Section 4065 (3), which purports to prohibit the executive officers of the State from obeying the desegregation decisions of the United States Supreme Court, and the several statutes enacted by the 1964 session of the Mississippi legislature which purport to prohibit picketing of public buildings, congregating and refusing to disperse; printing or circulating material which interferes with the operation of a business establishment; printing or circulating material which advocates social equality; the disturbing of the peace of others; giving false statements of complaints to Federal officials; obstructing public streets; encouraging others to remain on private premises of another when forbidden to do so; and statutes which purport to authorize officials to restrain the movements of groups and individuals and to impose curfews; authorize an increase in the strength of the State Highway Patrol from 274 to 475 men and give the Governor power to dispatch the Highway Patrol into areas on his own initiative; authorize an increase of the maximum penalty for violating a city ordinance from 30 to 90 days imprisonment and a fine of \$300; and authorize communities to pool their police forces and equipment.

[fol. 7] C-3. Petitioners seek removal of the above criminal proceedings to this Court pursuant to Subsection (1) of Title 28 U.S.C.A. Section 1443, commonly known as the Civil Rights Removal Statute, upon the ground that Petitioners have been denied, are being denied, and cannot enforce in the Courts of the State of Mississippi rights guaranteed and secured to them under the Federal Constitution and laws providing for the equal rights of all citizens of the United States and of all persons within the jurisdiction of the United States, in that:

- a. The Courts of Mississippi and the law enforcement officers of that State are hostile to and prejudiced against Petitioners by reason of Petitioners' race and

color and/or Petitioners' identification and association with Negroes, and also by reason of the commitment of those courts and those officers to enforce Mississippi's declared policy of racial discrimination and segregation as set forth in the above legislation;

- b. Under Mississippi law, custom and practice, a racially segregated courtroom and courtroom facilities and conveniences are maintained and will be maintained for the trial of Petitioners in flagrant violation of the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution.
- c. Under Mississippi law, custom and practice, Negro witnesses and Negro attorneys appearing on Petitioners' behalf are addressed in Court and will be addressed at Petitioners' trial by their first names, as a mark of contempt and of racial discrimination, in violation of the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution;
- [fol. 8] d. The Courts of Mississippi are closed to competent out-of-state attorneys of Petitioners' choice who have volunteered to represent Petitioners without charge; and Petitioners state, upon information and belief, that local counsel are unavailable to represent Petitioners in the State Court on a volunteer basis and/or, if so available, will refuse to raise and press the constitutional issues set forth in this Petition;
- e. Mississippi Municipal, County, and other judges and Municipal, County, and other prosecuting attorneys, including those who would officiate at Petitioners' trial, are either appointed by persons who are elected, or are themselves elected in elections at which Negroes have been systematically denied the right to vote by reason of race, in violation of the Fifteenth Amendment to the Federal Constitution; and a trial of Petitioners in which such judges and prosecuting attorneys

participate or officiate would deny Petitioners the equal protection of the laws contrary to the Fourteenth Amendment to the Federal Constitution;

- f. Negroes, because of their race, color and exclusion from the Mississippi election process, are systematically excluded from the juries in the county where Petitioners' cases are pending, and will be excluded from the Jury which would try Petitioners' cases.

[fol.9] C-4. Petitioners, further, seek removal of the above criminal proceedings to this Court pursuant to Subsection 2 of Title 28 U.S.C.A., Sec. 1443 and upon the ground that the aforesaid conduct of Petitioners was engaged in by them under color of authority derived from the Federal Constitution and laws providing for equal rights of American citizens without regard to race, creed, or color; and the above State Court prosecution of Petitioners results from Petitioners' refusal to desist or forego such conduct on the ground that to do so would be inconsistent with the aforesaid Federal Constitution and laws (Title 42 U.S.C. Sec. 1981, et seq.), in the following particulars, among others:

- a. The acts for which Petitioners are being held to answer for as a criminal offense or offenses, as described in the preceding paragraphs are, insofar as the offenses charged have any basis in fact, acts done in the constitutionally protected exercise of Petitioners' right to be free of the discrimination and segregation prohibited by the Fourteenth Amendment to the Federal Constitution and the right to exercise the freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments to the Federal Constitution and 42 U.S.C.A. 1981, et seq.;
- b. Insofar as the offenses charged against Petitioners are based on allegations of conduct not protected by the Federal Constitution and laws cited, those allega-

tions are groundless in fact and the prosecution of Petitioners and/or the subjection of Petitioners to such prosecution denies Petitioners the due process and equal protection of the law.

- [fol. 10] c. Conviction of Petitioners of the charge against them has and will punish them for the exercise of rights, privileges and immunities secured them by the Federal Constitution and laws, and has and will deter them and others similarly situated from the future exercise of their Federally protected rights, privileges and immunities.
- d. If the Mississippi statute or ordinance under which Petitioners are charged is construed to make Petitioners' above-mentioned conduct criminal, those statutes or ordinances are unconstitutional on their face and as applied;
- e. If the said statutes are construed so as to save their constitutionality under Federal Constitution, there is no evidence upon which Petitioners may be convicted consistent with the due process of law required by the Fourteenth Amendment to the Federal Constitution.
- f. Said statutory provision is unconstitutionally vague, indefinite and uncertain; it fails adequately to appraise Petitioners beforehand of the nature of the acts or conduct condemned by the statute; and, on its face and as sought to be applied to Petitioners, it offends the due process clause of the Fourteenth Amendment to the Federal Constitution.

[fol. 11] **Part D**

D-1. Petitioners are advised and believe that a Rule of this Court, promulgated on July 10, 1962, provides:

"That any attorney who is then in good standing as a member of the Bar of another state may be ad-

mitted by comity upon introduction and proper showing of his qualifications, to handle a particular case before the Court in conjunction with an attorney of his choice who is then admitted generally to practice before this Court. Such non-resident attorney may be thus admitted to practice as an associate of a resident attorney in a particular case without payment of any fee therefor. All such attorneys shall acquaint themselves with the rules and practices of this Court and shall abide thereby and shall be subject to disciplinary action for any abuse of such privilege or violation of any rule of practice of procedure of the Court."

D-2. Petitioners are further informed, believe and state the fact to be that the above provisions of the Rules of this Court have been authoritatively interpreted and applied by this Court to mean that:

- a. A local attorney must appear and move the admission of any out-of-state attorney who seeks to handle a particular case in this District Court;
- b. All papers offered for filing in this Court by an attorney of another state must bear the signature of a resident attorney; and
- c. The resident attorney must actually accompany and be present with the out-of-state attorney during all appearances before the Court in connection with the matter.

D-3. Notwithstanding diligent efforts, Petitioners have been unable to obtain a local Mississippi attorney to represent them or become associated with this proceeding before this Court because of the following reasons:

- a. Petitioners are without funds to pay for the services of an attorney and the out-of-state counsel mentioned below are volunteering their services;

- b. Petitioners allege upon information and belief that out of a total of 2190 members of the Bar of the State of Mississippi, only three (each of whom is a Negro) are willing to handle cases raising the above constitutional issues which Petitioners desire to raise. Each of these Negro attorneys is located in Jackson, Mississippi, and each of them is at present so over-burdened with cases similar to the instant cases of Petitioners, that they are unable to accept Petitioners' cases on a voluntary basis, notwithstanding they have been requested to do so; and
- c. Upon information and belief, based upon the observation and comments made by the Court in *United States v. Wood*, 295 F. 2d 779, 781 (Note 9, CA 5th, 1961), *United States ex rel. Goldsby vs. Harpole*, 236 F. 2d 71 (C.A. 5, 1959), and *United States v. Wiman*, 304 F. 2d, 53, 68 (CA 5th, 1962), it is extremely unlikely that Petitioners could obtain the services of a white local attorney in Mississippi to raise the above-mentioned constitutional issue.

D-4. Petitioners have requested and have obtained the services of their undersigned attorneys, William Rossmore of the New Jersey Bar and Jerry S. McCroskey of the Michigan Bar, each of whom is a member of the Federal Bar in their respective districts, and each has agreed to volunteer his services in Petitioners' behalf; and George W. Crockett, Jr. of the Bar of the United States Court of Appeals for the Fifth Circuit and the Supreme Court of the United States has volunteered to act as Of Counsel in this matter.

D-5. The above-mentioned Court Rule if interpreted and applied so as to prevent Petitioners from proceeding under the circumstances as set forth herein, denies to Petitioners the right to counsel of their choice, is contrary to the decision of the Court of Appeals for the Fifth Circuit in

Lefton vs. Hattiesburg (decided June 5, 1964) and is unconstitutional under the due process clause of the Fifth Amendment to the Federal Constitution.

[fol. 13] D-6. Petitioners are aware of the provisions of the Federal Removal Statute, 28 U.S.C.A. Section 1446 (a) which requires that they file with this petition "a copy of all process, pleadings, and orders served upon him . . . in such actions (Emphasis supplied)." No process, pleadings or orders have been served upon Petitioners in said State Court proceedings and therefore there are none which Petitioners can attach hereto; alternatively, Petitioners allege upon information and belief that a monetary charge is made by the City and County officials for certified or other copies of process, pleadings and orders in Petitioners' cases, and these Petitioners affirm, pursuant to 28 U.S.C. Sec. 1951, that they cannot, because of their poverty, pay or give security for the payment of such fees, cost and/or charges and still be able to provide themselves with the necessities of life. Accordingly, Petitioners are unable to attach to this Petition copies of any process, pleadings or orders which may have been issued in their State Court proceedings.

[fol. 14] Wherefore, the premises considered, Petitioners pray as follows:

1. That this Petition for Removal be filed, pursuant to 28 U.S.C.A. 1443 (A) (1958), and *Lefton v. Hattiesburg*, 5th Cir., No. 21441, decided June 5, 1964;

2. That jurisdiction be retained by this Court under 28 U.S.C.A. 1443 (1958), and *Rachel v. Georgia*, 5th Cir., No. 31234, order of March 12, 1964; and a trial by jury had in this Court;

3. (If Petitioners be presently in custody:) That a Writ of Habeas Corpus issue forthwith transferring Petitioners to the custody of the United States Marshal and directing Petitioners' release upon reasonable bail fixed by this Court;

4. That any rule of this Court requiring local counsel be waived or suspended for the purpose of permitting the Court to receive and act upon this Petition for Removal without the necessity of sponsorship or association of any local counsel in any respect;

5. That this Court accord such further relief as is necessary and justified under the circumstances.

By Jerry S. McCroskey, Attorney for Petitioners,
Address: 507½ N. Farish St., Jackson, Miss.
Phone: 352-7281.

By William Rossmoore, 507½ N. Farish St., Jackson, Miss. 352-7281.

George W. Crockett, Of Counsel, Address: 507½ N. Farish St., Jackson, Miss. Phone: 352-7281.

[fol. 15] *Duly sworn to by Monroe Sharp, jurat omitted in printing.*

[fol. 67]

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF MISSISSIPPI
 GREENVILLE DIVISION
 No. GCR 6436

THE CITY OF GREENWOOD,

vs.

DOROTHY WEATHERS, Defendant-Petitioner.

PETITION FOR REMOVAL AND FOR OTHER RELIEF—
 Filed July 23, 1964

A-2. Petitioner is charged in said criminal proceeding with the alleged offense of interfering with an officer in the performance of his duty.

[fol. 69]

Part B

B-1. On July 16, 1964 in the City of Greenwood, Mississippi, at approximately 12:00 M., Petitioner, in company with several other COFO adherents, was engaged at Leflore County Courthouse in the exercise of her constitutionally protected right of peaceful picketing.

[fol. 128]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. GCR 6437

CITY OF GREENWOOD, MISS.,

VS.

ARANCE BROOKS, Defendant-Petitioner.

PETITION FOR REMOVAL AND FOR OTHER RELIEF
—Filed July 23, 1964

• • • • •

A-2. Petitioner is charged in said criminal proceeding with the alleged offense of profanity and use of vulgar language (Miss. Code Sect. 2089.5).

• • • • •

[fol. 129A] B-1. The conduct and activity of Petitioner has at all times been lawful and she did at no time use profanity or vulgar language in violation of Miss. Code Sect. 2089.5 or any other law of Mississippi or the City of Greenwood.

• • • • •

[fol. 187]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. GCR 6438

CITY OF GREENWOOD, MISS.,

VS.

GEORGE H. ALBERTZ, Defendant-Petitioner.

PETITION FOR REMOVAL AND FOR OTHER RELIEF
—Filed July 23, 1964

• • • • •

A-2. Petitioner is charged in said criminal proceeding
with the alleged offense of reckless driving.

[fol. 188A]

Part B

B-1. The conduct and activity of Petitioner has at all
times been lawful and he at no time did commit the al-
leged offense of reckless driving in violation of any law
of the State of Mississippi or the City of Greenwood.

• • • • •

[fol. 238]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. GCR 6439

CITY OF GREENWOOD,

VS.

FRED HARRIS, JOHN HANDY.

PETITION FOR REMOVAL AND FOR OTHER RELIEF
—Filed August 3, 1964

.

A-2. Petitioners are charged in said criminal proceeding with the alleged offense of Disturbing the Peace in violation of Sec. 2089.5, Mississippi Code of 1942, as amended.

.

[fol. 240]

Part B

B-1. On August 1, 1964, in the City of Greenwood, Mississippi, at approximately 5 P. M., Petitioners, in company with several other COFO adherents, were engaged at Greenwood, Mississippi in the expression of grievances as to brutality by members of the City Police Department; specifically, Petitioners were standing across the street from the Henderson Grocery, located at 500 Avenue I, Greenwood, Mississippi, and informing the passing public of the alleged brutality toward a Negro prisoner by the proprietor of said establishment, said proprietor being a member of the Police Department of the City of Greenwood, Mississippi. Petitioners relayed such information in a peaceful, orderly, manner, by word of mouth, pamphlets, and photographs illustrating the incident in question.

.

[fol. 289]

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF MISSISSIPPI
 GREENVILLE DIVISION
 No. GCR 6440

CITY OF GREENWOOD,

vs.

MONROE SHARPE.

PETITION FOR REMOVAL AND FOR OTHER RELIEF
 —Filed August 3, 1964

A-2. Petitioner is charged in said criminal proceeding with the alleged offense of interfering with a Police Officer in the performance of his duty.

[fol. 291]

Part B

B-1. On July 31, 1964, in the City of Greenwood, Mississippi, at approximately 11:30 A. M., Petitioner, a passenger in an automobile being driven by a fellow COFO adherent, was ordered out of said automobile by officers of the Police Department of the City of Greenwood, Mississippi. Upon alighting from the automobile Petitioner informed said officers that he was a Voter Registration Worker acting within the scope of Federal law, at which point said officers placed Petitioner under arrest and charged him with interfering with a Police Officer in the performance of his duty.

[fol. 339]

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF MISSISSIPPI
 GREENVILLE DIVISION
 No. GCR 6441

CITY OF GREENWOOD,

VS.

JOHN PAUL.

PETITION FOR REMOVAL AND FOR OTHER RELIEF
 —Filed August 3, 1964

• • • • •

A-2. Petitioner is charged in said criminal proceeding with the alleged offense of operating a motor vehicle with improper license tags in violation of Sections 9352-24 and 9352-51, Mississippi Statute, 1942, as amended.

• • • • •

[fol. 341]

Part B

B-1. On July 31, 1964, in the City of Greenwood, Mississippi, at approximately 11:30 A. M., Petitioner was engaged at the City of Greenwood, Mississippi, in the operation of a motor vehicle, 1964 Plymouth Savoy, bearing Tennessee temporary license 019954B, issued on or about July 28, 1964, in Memphis, Tennessee. Subject automobile was driven into the State of Mississippi on or about July 28, 1964, and at the time of Petitioner's arrest was being operated in a lawful manner on the streets of the City of Greenwood, Mississippi.

• • • • •

[fol. 389]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. GCR 6442

STATE OF MISSISSIPPI and/or
CITY OF GREENWOOD,

VS.

GEORGE H. ALBERTZ.

PETITION FOR REMOVAL AND FOR OTHER RELIEF
—Filed August 3, 1964

A-2. Petitioner is charged in said criminal proceeding with the alleged offense of contributing to the delinquency of a minor in violation of Section 7185-13, Mississippi Code of 1942, as amended.

[fol. 391]

Part B

B-1. On July 31, 1964 in the City of Greenwood, Mississippi, at approximately 11:30 A. M., Petitioner, in company with several other COFO adherents, was engaged at City of Greenwood, Miss. in the act of walking along the roadside singing songs when approached by officers of the Greenwood Police Department and ordered to disperse. The group did in fact disperse, after which, Petitioner, who was walking alone, was followed by said Police Officers for approximately one block, and then arrested by said Officers and charged with contributing to the delinquency of a minor, and parading without a permit.

[fol. 439]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. GCR 6443

CITY OF GREENWOOD,

VS.

GEORGE H. ALBERTZ.

PETITION FOR REMOVAL AND FOR OTHER RELIEF
—Filed August 3, 1964

A-2. Petitioner is charged in said criminal proceeding with the alleged offense of parading without a permit in violation of Ordinances of the City of Greenwood, Mississippi, said Ordinance being enacted on June 21, 1963, and recorded at page 67, Minute Book 55, of the Ordinances of the City of Greenwood, Mississippi.

[fol. 441]

Part B

B-1. On July 31, 1964 in the City of Greenwood, Mississippi, at approximately 11:30 A. M., Petitioner, in company with several other COFO adherents, was engaged at City of Greenwood, Miss. in the act of walking along the roadside singing songs when approached by officers of the Greenwood Police Department and ordered to disperse. The group did in fact disperse, after which, Petitioner, who was walking alone, was followed by said Police Officers for approximately one block, and then arrested by said Officers and charged with contributing to the delinquency of a minor, and parading without a permit.

[fol. 489]

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF MISSISSIPPI
 GREENVILLE DIVISION
 No. GCR 6444

CITY OF GREENWOOD,

VS.

WILLIAM W. HODES.

PETITION FOR REMOVAL AND FOR OTHER RELIEF
 —Filed August 3, 1964

• • • • •

A-2. Petitioner is charged in said criminal proceeding with the alleged offense of Disturbing the Peace in violation of Sec. 2089.5, Mississippi Code of 1942, as amended.

• • • • •

[fol. 491]

Part B

B-1. On August 1, 1964 in the City of Greenwood, Mississippi, at approximately 6 P. M., Petitioner, in company with several other COFO adherents, was engaged at Greenwood, Mississippi in the conduct of a "Freedom Registration" Drive. Petitioner's activities were designed to encourage Negro citizens to exercise their right to vote, and to illustrate by said "Freedom Registration" the number of Negro citizens desiring to participate in the electoral process, but who were precluded from officially becoming registered to vote.

• • • • •

[fol. 539]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. GCR 6445

CITY OF GREENWOOD,

VS.

BENJAMIN MCGEE A/K/A SILAS MCGEE.

PETITION FOR REMOVAL AND FOR OTHER RELIEF
—Filed August 3, 1964

A-2. Petitioner is charged in said criminal proceeding with the alleged offense of operating a motor vehicle with improper license tags in violation of Sections 9352-24 and 9352-51, Mississippi Statute, 1942, as amended.

[fol. 541]

Part B

B-1. On July 31, 1964, in the City of Greenwood, Mississippi, at approximately 11:30 A. M., Petitioner was engaged at the City of Greenwood, Mississippi, in the operation of a motor vehicle, 1964 Plymouth Savoy, bearing Tennessee temporary license 019955B, issued on or about July 29, 1964, in Memphis, Tennessee. Subject automobile was driven into the State of Mississippi on or about July 29, 1964, and at the time of Petitioner's arrest was being operated in a lawful manner on the streets of the City of Greenwood, Mississippi.

[fol. 589]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. GCR 6446

CITY OF GREENWOOD,

VS.

FRED GORDON.

PETITION FOR REMOVAL AND FOR OTHER RELIEF
—Filed August 4, 1964

• • • • •

A-2. Petitioner is charged in said criminal proceeding with the alleged offense of Profanity, in violation of Mississippi Code, Sec. 2291.

• • • • •

[fol. 591]

Part B

B-1. On August 2, 1964 in the City of Greenwood, Mississippi, at approximately 1:30 P. M., Petitioner, in company with several other COFO adherents, was engaged at McLaurin and Ave. H in the exercise of his rights as a citizen to walk freely upon the public streets.

• • • • •

[fol. 637]

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF MISSISSIPPI
 GREENVILLE DIVISION
 No. GCR 6447

CITY OF GREENWOOD,

VS.

ANNA RUTH TURNER.

PETITION FOR REMOVAL AND FOR OTHER RELIEF
 —Filed August 4, 1964

• • • • •

A-2. Petitioner is charged in said criminal proceeding with the alleged offense of Disturbance of the public peace, or the peace of others, in violation of Mississippi Code, Sec. 2089.5.

• • • • •

[fol. 639]

Part B

B-1. On August 2, 1964 in the City of Greenwood, Mississippi, at approximately 11:00 A. M., Petitioner, in company with several other COFO adherents, was engaged at McLaurin and I Ave. in the exercise of her constitutionally protected right to observe and participate in an economic boycott.

• • • • •

[fol. 686]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. GCR 6448

CITY OF GREENWOOD,

vs.

ROBERT MASTERS.

PETITION FOR REMOVAL AND FOR OTHER RELIEF
—Filed August 4, 1964

A-2. Petitioner is charged in said criminal proceeding
with the alleged offense of Assault.

[fol. 688]

Part B

B-1. On August 1, 1964 in the City of Greenwood, Mississippi, at approximately 3:20 P. M., Petitioner, in company with several other COFO adherents, was engaged at Carrolton Ave. in the exercise of his constitutionally protected right of voter registration activity, when he was accosted and assaulted in said exercise.

[fol. 735]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
Criminal Action
No. GCR 6451

CITY OF GREENWOOD, MISSISSIPPI,

VS.

JOHN HANDY.

(Style changed—Court Order 12/30/64)

PETITION FOR REMOVAL AND FOR OTHER RELIEF
—Filed August 10, 1964

A-2. Petitioner is charged in said criminal proceeding with the alleged offense of inciting to riot, believed to be Mississippi Statute No. 8576.

[fol. 737]

Part B

B-1. On August 8, 1964 in the City of Greenwood, Mississippi, at approximately 4:45 P. M., Petitioner, in company with several other COFO adherents, was engaged at Ave. I and McLaurin in the activity of observing and advising potential patrons of Henderson's Grocery not to buy in said Grocery, due to the police brutality of the proprietor of said store; and while engaged in merely walking across the street was arrested and charged as hereinabove set forth.

[fol. 774]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. GCR 6453

STATE OF MISSISSIPPI and/or
CITY OF GREENWOOD,

vs.

JESSIE HARRISON.

CITY OF GREENWOOD,

v.

JESSIE HARRISON.

(Style changed by Court Order dated 12/30/64)

PETITION FOR REMOVAL AND FOR OTHER RELIEF
—Filed August 17, 1964

A-2. Petitioner is charged in said criminal proceeding with the alleged offense of Disturbance in a Public Place, believed to be an ordinance of the City of Greenwood.

[fol. 775]

Part B

B-1. On August 15, 1964 in the City of Greenwood, Mississippi, at approximately 11:00 A. M., Petitioner, in company with several other COFO adherents, was engaged at Ave. H and McLaurin St. in the activity of preparing to eat his lunch when he was arrested pursuant to an alleged warrant charging him with Disturbance of a Public Place at Young and Pelican Sts. at about 11:00 AM on August 12, 1964, notwithstanding at the time of the alleged disturbance, petitioner was several blocks away.

[fol. 816]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. GCR 6454

CITY OF GREENWOOD,

VS.

ANNA RUTH TURNER.

PETITION FOR REMOVAL AND FOR OTHER RELIEF
—Filed August 18, 1964

• • • • •

A-2. Petitioner is charged in said criminal proceeding with the alleged offense of Disturbance in a Public Place, believed to be an ordinance of the City of Greenwood.

[fol. 817]

Part B

B-1. On August 11, 1964 in the City of Greenwood, Mississippi, at approximately 2:00 P. M., Petitioner, in company with several other COFO adherents, was engaged at Young and Pelican Sts. in the constitutionally protected right to assemble on the public streets.

• • • • •

[fol. 842]

DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT OF MISSISSIPPI
FOR THE NORTHERN DISTRICT (ON
GREENVILLE DIVISION
No. GCR 6462

— F MISSISSIPPI,
CITY OF GREENWOOD, STATE OF

VS.

LAURA MCGHEE.

— OTHER RELIEF
PETITION FOR REMOVAL AND FOR 1964
—Filed August 21,

.
A-2. Petitioner is charged in said criminal proceeding
with the alleged offense of assault and battery, believed to
be an ordinance of the City of Greenwood, Mississippi.
.

[fol. 844]

Part B

B-1. On August 18, 1964 in the City of Greenwood, Mississippi, at approximately 11:30 A. M., Petitioner, in company with several other COFO adherents, was lawfully within the police station of the City of Greenwood at which time she was illegally assaulted and battered by a police officer of the City of Greenwood which assault and battery was accomplished with the intent to intimidate and harass petitioner and dissuade petitioner from making proper and lawful inquiry concerning a member of her immediate family; all of which petitioner had the constitutionally protected right to do.
.

[fol. 853]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

GREENVILLE DIVISION

No. GCR 6435

CITY OF GREENWOOD,

vs.

DOROTHY WEATHERS, BERNICE COLE, ARANCE BROOKS,
Defendant-Petitioners.

MOTION TO REMAND—Filed August 7, 1964

The City of Greenwood, Mississippi, respondent in the above styled and numbered cause moves the Court for an order remanding this cause and jurisdiction of the petitioners named therein to the Police Court of City of Greenwood, Leflore County, Mississippi, and ordering petitioners to pay respondent all costs and disbursements incurred by reason of these removal proceedings; and for grounds hereof respondent says that this cause was removed improvidently and is not a case within 28 USC Section 1443, under which statute it was removed.

Arnold F. Gwin, Attorney for the City of Greenwood,
Mississippi, Post Office Box 725, Greenwood, Mississippi.

CERTIFICATE

The undersigned counsel of record for the above named respondent, the City of Greenwood, Mississippi, hereby certifies that a true copy of the foregoing motion has been this day deposited in the United States mail with postage prepaid, properly addressed to each of the following attorneys of record for the petitioners for removal in

said cause, to-wit: George W. Crockett, Jr., 507½ N. Farish St., Jackson, Mississippi, Jerry S. McCroskey, 507½ N. Farish St., Jackson, Mississippi, and William Rossmore, 507½ N. Farish St., Jackson, Mississippi.

This the 6th day of August, 1964.

Arnold F. Gwin, Attorney for the Respondent, the
City of Greenwood, Mississippi.

[fol. 855]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. GCR 6435-GCR 6448

CITY OF GREENWOOD,

VS.

GEORGE H. ALBERTZ, et al.

MEMORANDUM IN SUPPORT OF MOTIONS TO
REMAND—Filed August 7, 1964

Inasmuch as all of the above causes involve the same legal points that were discussed by this Court in City of Greenwood vs. Willie Peacock, et al., GCR 6413, opinion dated June 17, 1964, and by the brief of the respondent in support of the motion to remand in State of Mississippi and/or City of Greenwood v. Stokely Carmichael, et al., GCR 6429 (not yet decided), respondent will not here restate those numerous authorities which hold that remand is required in such cases as these. (As shown by the certificate below, the City's Brief in Support of the Motion

to Remand in the Stokely Carmichael case has been made available to counsel in the above causes.)

The above 14 cases involve the following offenses: assault, assault and battery by biting a police officer, interfering with an officer in the performance of his duty, the use of profanity, reckless driving, disturbing the peace, contributing to the delinquency of a minor, parading without a permit, and operating a motor vehicle with improper license tags. As shown by the authorities cited in the above mentioned opinion and briefs, these offenses have no relation to any law providing for equal rights, and petitioners do not allege in any of their petitions any state statute which denies them their equal civil rights in the judicial tribunals of the state.

[fol. 856] Additionally, respondent requests this Court to notice the fact that from April, 1964, to this date, removal of 125 cases from the City of Greenwood Police Court has been sought in this Federal Court, and that these cases represent a multitude of misdemeanors, such as biting, reckless driving, obstructing public sidewalks and driving without a license tag. If removal of such cases as these is allowed under 28 U.S.C. Section 1443, it should be obvious that the Federal Courts will be open to almost any defendant, civil or criminal, and that the Federal Courts will be glutted with such cases, none of which truly involve civil rights.

Respectfully submitted,

Lott and Sanders, Attorneys for the City of Greenwood,
Post Office Box 725, Greenwood, Mississippi,
By Arnold F. Gwin.

CERTIFICATE

The undersigned counsel of record for the City of Greenwood, Mississippi, respondent, hereby certifies that a true copy of the foregoing memorandum has been this day forwarded by United States mail, postage prepaid, to the following attorneys of record for the petitioners for re-

moval in this said cause, to-wit: George W. Crockett, Jr., and Allen Zemol, Jerry S. McCrosskey, William Rossmore, and Lawrence Warren, all of whose address is 507½ North Farish Street, Jackson, Mississippi. The undersigned counsel also certifies that a true copy of the brief in support of the motion to remand in that cause styled State of Mississippi and/or City of Greenwood vs. Stokely Carmichael, et al., GCR 6429, has likewise been forwarded to the above said attorneys at the said address.

This the 6th day of August, 1964.

Arnold F. Gwin.

[fol. 857]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

No. GCR6435

CITY OF GREENWOOD, MISSISSIPPI,

v.

DOROTHY WEATHERS, et al.

No. GCR6436

CITY OF GREENWOOD, MISSISSIPPI,

v.

DOROTHY WEATHERS.

No. GCR6437

CITY OF GREENWOOD, MISSISSIPPI,

v.

ARANCE BROOKS.

No. GCR6438

CITY OF GREENWOOD, MISSISSIPPI,

v.

GEORGE H. ALBERTZ.

No. GCR6439

CITY OF GREENWOOD, MISSISSIPPI,

v.

FRED HARRIS, JOHN HANDY.

No. GCR6440

CITY OF GREENWOOD, MISSISSIPPI,

v.

MONROE SHARPE.

No. GCR6441

CITY OF GREENWOOD, MISSISSIPPI,

v.

JOHN PAUL.

[fol. 858]

No. GCR6442

CITY OF GREENWOOD, MISSISSIPPI,

v.

GEORGE ALBERTZ.

No. GCR6443

CITY OF GREENWOOD, MISSISSIPPI,

v.

GEORGE ALBERTZ.

No. GCR6444

CITY OF GREENWOOD, MISSISSIPPI,

v.

WILLIAM W. HODES.

No. GCR6445

CITY OF GREENWOOD, MISSISSIPPI,

v.

BENJAMIN MCGEE a/k/a SILAS MCGEE.

No. GCR6446

CITY OF GREENWOOD, MISSISSIPPI,

v.

FRED GORDON.

No. GCR6447

CITY OF GREENWOOD, MISSISSIPPI,

v.

RUTH TURNER.

No. GCR6448

CITY OF GREENWOOD, MISSISSIPPI,

v.

ROBERT MASTERS.

MEMORANDUM OPINION AND ORDER—December 30, 1964

These cases originated in this court by the filing of petitions pursuant to 28 U. S. C. § 1443 to remove criminal [fol. 859] prosecutions from the Police Court of the City of Greenwood, Mississippi. In each case, Greenwood has filed a motion to remand, and these motions are now before the court on opposing briefs which treat all the cases as consolidated, because of the similarity of issues involved.

In none of the cases have the affidavits upon which the state prosecutions are based been made a part of the record, but counsel agree in their briefs as to the nature of the offenses charged and the statutory provisions defining those offenses. It is not disputed that the offenses are limited to violations of statutes or ordinances which are not discriminatory on their faces, e.g., assault and battery, resisting arrest, reckless driving, etc. Defendants do not show that any state statutory or constitutional provisions are discriminatory on their faces so as to deprive them of their equal civil rights on trial of these charges in the state court. Defendants' argument is that discriminatory enforcement of these non-discriminatory ordinances will so operate, but this argument is of no avail in determining this court's jurisdiction on removal. These cases are governed by the opinion of this court in *City of Clarksdale, Mississippi v. Gertge*, No. DCR6448 (December 23, 1964), a copy of which is attached hereto, and under the rule announced in that case, they were improvidently removed and this court is without jurisdiction.

Therefore, it is,

Ordered:

[fol. 860] 1) That these causes, which were improperly filed by the defendants and received by the Clerk with the style of the cases including the State of Mississippi as a party, when the style should have been identical to the style of the same cases in the state court, shall be styled as in this Memorandum Opinion and Order.

2) That the Clerk shall change the style of the files and records in this cause to conform to the style of this order.

3) That the motions to remand shall be, and the same hereby are, sustained.

4) That these causes shall be, and the same hereby are, remanded to the Police Court of City of Greenwood, Mississippi. This remand, however, shall be, and the same hereby is, stayed for a period of ten days, provided that if notice of appeal is filed during that period, the stay shall be effective until final disposition of the causes on appeal. Defendants are hereby notified that upon expiration of such a stay, they must abide by the terms and conditions of the bonds under which they were released from custody by the Police Court of the City of Greenwood, Mississippi.

5) That the Clerk of this court is directed to serve promptly on the defendants, on all counsel of record, and upon the Clerk of the Police Court of the City of Greenwood, Mississippi, certified copies of this order [fol. 861] by certified mail, and to note such service on the docket.

This the 30th day of December, 1964.

Claude F. Clayton, District Judge.

[fol. 862]

ATTACHMENT

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION
No. DCR6448

CITY OF CLARKSDALE, MISSISSIPPI,

v.

MARIE GERTGE.

MEMORANDUM OPINION

This case originated in this court by the filing of a petition pursuant to 28 U. S. C. §1443 to remove a criminal prosecution from the Police Court of the City of Clarksdale, Mississippi. Clarksdale filed a motion to remand and that motion is before the court for disposition on briefs which are directed to the face of the papers. The motion will be so considered.

The petition recites that petitioner is a white female affiliated with a civil rights organization, that she was arrested and charged with violating a city ordinance in that she was accused of taking a photograph within the Clarksdale City Hall without the permission of the Mayor and Commissioners of that city, that she was later released on \$100 cash bail, and that her prosecution for this offense is pending in the Clarksdale Police Court, but that she has not yet been tried. As grounds for removal, it is alleged that petitioner was present in Clarks-
[fol. 863] dale as a participant in a voter registration drive directed at Negroes and that her arrest and prosecution

were for the purpose of harassing her and preventing her from carrying on lawful and constitutionally protected activities in the voter registration drive, pursuant to a policy of discrimination which is encouraged and enforced by all three branches of the state government. Prevailing community opinion is alleged to be hostile to petitioner and other civil rights workers, making it impossible for her to employ a member of the Mississippi Bar to represent her.

The petition alleges that the Police Court of Clarksdale and the Circuit Court of Coahoma County¹ are hostile to petitioner by reason of the commitment of those courts to enforce the state's policy of racial segregation, which is allegedly demonstrated by maintenance of racially segregated courtrooms and by the practice of addressing Negro witnesses and attorneys by their first names, in violation of the equal protection clause of the Fourteenth Amendment; by the election of judges at elections in which Negroes have been denied the right to vote, in violation of the Fifteenth Amendment; by systematic exclusion of Negroes from juries by reason of race, in violation of the Sixth and Fourteenth Amendments; and by the exactment of excessive, exorbitant and discriminatory bail in the cases of defendants charged with offenses arising out of the exercise of their equal civil rights, in violation of the Eighth and Fourteenth Amendments.

As a result of the foregoing, petitioner claims she is being prosecuted for acts done under color of authority [fol. 864] derived from the federal Constitution and laws providing for equal rights, particularly the First, Fourteenth and Fifteenth Amendments to the Constitution and 42 U. S. C. §§ 1971, 1983 and 1985. She allegedly has been and is being denied, and cannot enforce in the courts of

¹ The circuit court is apparently included on the mistaken belief that an appeal would lie there for trial *de novo* upon conviction in the police court. Coahoma County has a county court to which such an appeal would lie in the first instance.

the State of Mississippi, rights under the said federal constitutional and statutory provisions for equal rights of citizens of the United States and of all persons within the jurisdiction of the United States.

Clarksdale's motion to remand is on the ground that the petition does not show on its face that petitioner was or is being deprived of any equal civil right by any substantive or procedural rule of law of the State of Mississippi or any ordinance of the City of Clarksdale, and that absent such a showing, this court is without jurisdiction under 28 U. S. C. § 1443. That statute reads:

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do an act on the ground that it would be inconsistent with such law.

The question of whether there is a right to remove or not is jurisdictional. Thus, congressional authority must [fol. 865] be found for this court's assumption of jurisdiction. Absent such authority, the right must be denied regardless of the persuasiveness of petitioner's appeal for aid. Here, perhaps more than in many other areas of federal jurisdiction, the delicate balance of a federal system is at stake and for this reason it has been repeatedly held that the removal statutes must be strictly construed. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U. S. 100 (1941).

I.

Under subsection (1) of the statute, a state criminal prosecution may be removed by the defendant if he "is denied or cannot enforce in the courts of such state a right under any law providing for the equal civil rights of citizens of the United States." Since 28 U. S. C. § 1446 (c) requires removal of criminal prosecutions under § 1443 to be effected before trial, the facts upon which the right to remove depends must be such as will appear before trial. The petition must allege before trial that the state court *will* deny petitioner's rights on trial.

The presumption that courts of competent jurisdiction will obey the rules of law applicable to litigation before them, not only precludes a federal court from surmising that the state court will unlawfully discriminate against a defendant or that it will fail to correct injustices perpetrated by others in the course of a criminal prosecution, but the presumption also requires the federal court to act upon the expectation that the state court will be governed by the state constitution and statutes, as construed by the highest court of the state. It follows that the only standard [fol. 866] for invoking jurisdiction under 28 U. S. C. § 1443 (1) is a finding that petitioner will be denied a federally guaranteed equal civil right on trial as a result of the state constitution, a statute, municipal ordinance, rule of court or other regulatory provision binding on the court in petitioner's trial so that the state court may be presumed in advance to obey such discriminatory provision. If no such deprivation of right is shown and remand is ordered, petitioner is not without remedy. If, contrary to the presumption, the state court permits an infringement of the petitioner's equal civil rights, he may seek relief on appeal to the higher courts of the state, and, ultimately, if necessary, to the United States Supreme Court.

The foregoing rationale is the foundation of those decisions which have repeatedly construed subsection (1) with such consistency that certain principles may be taken

as settled. In order to authorize a removal, a violation of the equal protection clause of the Fourteenth Amendment must be shown. The fact that other rights guaranteed by the Fourteenth Amendment are violated will not authorize a removal where the procedure adopted by the state authorities is applied equally to all citizens, *Steele v. The Superior Court of California*, 164 F. 2d 781 (9th Cir. 1948). The denial of right must result from provisions of the state constitution or statutes as construed by the highest court of the state, which deny or prevent the enforcement of equal rights secured to the defendant by the Constitution or laws of the United States, rather than through the illegal and discriminatory acts of state officials or individuals where such acts are not authorized by state law. *Virginia v. Rives*, 100 U. S. 303 (1879); *Kentucky v. [fol. 867] Powers*, 201 U. S. 1 (1905). Where the denial of rights arises from such wrongful acts of state officials, not authorized by state law, the remedy is to be found in the state courts, trial and appellate, and ultimately in the Supreme Court of the United States, if necessary. *Hull v. Jackson County Circuit Court*, 138 F. 2d 820 (6th Cir. 1943).

Petitioner takes issue with these principles, however, and argues that Congress, in enacting the predecessor of 28 U. S. C. § 1443 (Act of April 9, 1866, ch. 31, § 3, 14 Stat. 27) intended that fundamental unfairness in the operation of state courts should serve as a basis for removal, and (petitioner implies) that restrictive constructions of the statute by the Supreme Court in the latter part of the nineteenth century deviated from the intent of Congress by unduly emphasizing the necessity for a state statutory or constitutional infringement on equal rights; that these restrictions were nevertheless not absolute but would permit removal without such infringement if the fact that petitioner's rights would be denied in the state court could be shown with a sufficient degree of certainty, and that recent decisions of the Supreme Court in the area of civil

rights indicate a purpose to allow a n
tation of congressional legislation desi
civil rights.

The first definitive construction of more liberal interpre-
moval statute was in *Virginia v. Rives* gned to protect equal
petitioners for removal alleged that the civil rights re-
charged with the murder of a white , supra. In that case,
in which strong racial prejudice exists they were Negroes
jury which indicted them and the jurman in a community
them were all white; that the court hited; that the grand
[fol. 868] for placement of a numbeors summoned to try
trial jury; and that, notwithstanding refused a request
quired jury service of males withoutr of Negroes on the
race, Negroes had never been allowe that state laws re-
in the county. The court observed the discrimination as to
of a discriminatory state constitutiond to serve as jurors
vision, and that if the officer chargt there was no claim
veniremen had disregarded the state, al or statutory pro-
Negroes because of race, he violated ed with selection of
eral law. Such criminal misuse of st, law so as to exclude
said to be "such a 'denial or disabil both state and fed-
judicial tribunals of the State' the ri ate law could not be
as is contemplated by the removal st ty to enforce in the
the court, inter alia, said: ghts of colored men,

It is to be observed that act gives statute." In that case,
only to a person "who is denie
in the judicial tribunals of the
rights." And this is to appear t the right of removal
statute of the State denies his r, or cannot enforce,
bar to his enforcing it, in the jState his equal civil
presumption is fair that they wrefore trial. When a
in their decisions; and in such eight, or interposes a
affirm on oath what is necessary adicial tribunals, the
when a subordinate officer of till be controlled by it
of State law, undertakes to deprase a defendant may
of a right which the statute layor removal But
the case at bar, it can hardly be te State, in violation
ive an accused party
y accords him, as in
said that he is denied,

or cannot enforce, "in the judicial tribunals of the state" the rights which belong to him. In such a case it ought to be presumed the court will redress the wrong (But, if not) the error will be corrected in a superior court Denial of equal rights in the action of the judicial tribunals of the State are left to the revisory powers of this court

[fol. 869] Such explicit language does not suggest that the Court envisioned circumstances other than legislative denial of rights which would permit removal. If there could be any doubt, it must be regarded as settled by decisions such as *Gibson v. Mississippi*, 162 U. S. 565 (1896), where removal was denied with this language:

(I)t is clear that the accused in the present case was not entitled to have the case removed . . . unless he was denied, by the constitution or laws of Mississippi, some of the fundamental rights of life or liberty that were guaranteed to other citizens resident in that state (The application for removal is improper) for the reason that neither the constitution of Mississippi nor the statutes of that state prescribe any rule for, or mode of procedure in, the trial of criminal cases which is not equally applicable to all citizens of the United States

Gibson v. Mississippi, supra; *Neal v. Delaware*, 103 U. S. 370 (1881); and *Bush v. Kentucky*, 107 U. S. 110 (1883), all of which contained similar language, were reviewed by the Supreme Court in *Kentucky v. Powers*, supra:

In each of these cases it was distinctly adjudged, in harmony with previous cases, that the words in Section 641 "who is denied or cannot enforce in the judicial tribunals of the state . . . any right secured to him by any law providing for the equal civil rights . . ." did not give the right of removal, unless the Constitution or the laws of the state in which the criminal prosecu-

tion was pending denied or prevented the enforcement in the judicial tribunals of such state of the equal rights of the accused as secured by any law of the United States. Those cases, as did the prior ones, expressly [fol. 870] held that there was no right of removal under Section 641, where the alleged discrimination against the accused, in respect of his equal rights, was due to the illegal or corrupt acts of administrative officers, unauthorized by the Constitution or laws of the state, as interpreted by its highest court.

This case, *Kentucky v. Powers*, was the last full scale examination of the removal statute by the Supreme Court, and it has frequently been denominated the leading case on the subject. No case has been found in which the court has suggested that the rule stated in *Powers* should in any way be modified. The lower federal courts, however, have had more recent opportunities to consider the statute and the unanimity with which they have followed the restrictive view announced in *Powers* is significant.

In *State of North Carolina v. Alston*, 227 F. Supp. 887 (M. D. N. C. 1964), two-hundred seventeen Negro and white civil rights workers were charged with one-hundred ninety-two criminal trespass offenses and five-hundred forty-two other offenses. Petitioning for removal, they alleged that the charges had arisen from their efforts to obtain service in licensed premises of public accommodation (this case was decided prior to the enactment of the Civil Rights Act of 1964); that their presence was objected to solely because of race; that the state courts were inappropriate forums for the redress of their constitutional rights; and that a trial in state court would be a deprivation of the federally guaranteed equal rights. Petitioners argued that the use of state criminal trespass statutes as an aid to the enforcement of private discrimination deprived them of equal rights. Sustaining a motion to remand, the district court said:

[fol. 871] It is well settled that 28 U. S. C. A. § 1443 authorized the removal of a criminal case from a state court to a Federal court "only when the constitution or laws of the state deny or prevent the enforcement of equal rights secured to a party by the constitution or laws of the United States, and not where the equal civil rights of citizens are recognized by the constitution or laws of the state." 76 C. J. S. Removal of Causes § 94. . . . "There is no right of removal under the statute where the alleged denial of, or inability to enforce, any such right results from the corrupt, illegal, or unauthorized administration of a state Constitution or laws which are not discriminatory and apply to all citizens alike." 45 Am Jur Removal of Causes 3109.

....

In summary, since no discriminatory state statutes or constitutional provisions are claimed, it is abundantly clear that petitioners must look to the state courts for the protection of any rights they might have under the Constitution and laws of the United States.

See also, *Steele v. Superior Court of California*, supra; *State of New Jersey v. Weinberger*, 38 F. 2d 298 (D. C. N. J. 1930); *In re Hagewood*, 200 F. Supp. 140 (D. Mich. 1961); *City of Birmingham v. Croskey*, 217 F. Supp. 947 (N. D. Ala. 1963); *State of Arkansas v. Howard*, 218 F. Supp. 626 (E. D. Ark. 1963); *Anderson v. State of Tennessee*, 228 F. Supp. 207 (1963); and *State of Alabama v. Shine*, 233 F. Supp. 371 (M. D. Ala. 1964).

[fol. 872] Assuming arguendo the truth of petitioner's assertion that the enacting Congress did not intend this restrictive construction of the statute, and that the courts misconceived the legislative purpose, it seems fruitless to consider this point after nearly a century of judicial construction importing a contrary view. At this date it would

appear that nothing short of an act of Congress could re-establish the supposed original intent of that body. The very absence of such new legislation in the face of long continued judicial rejection of that view is perhaps most significant of all in rebutting the proposition that Congress intended the federal courts to assume removal jurisdiction of state criminal prosecutions on petitions alleging that local officials would illegally discriminate in the application of non-discriminatory state laws. The several civil rights acts of the last few years, while considering in detail legislative solutions to the problems created by racial prejudice, have made no attempt to redefine the scope of 28 U. S. C. § 1443. Indeed, the framers of the Civil Rights Act of 1964, Pub. L. 88-352 (1964), had occasion to consider the removal statute in the amendment to 28 U. S. C. § 1447, providing that remand orders under 28 U. S. C. § 1443 should be reviewable on appeal, but in so doing they made no alteration whatsoever in the form of the removal statute itself.

Assuming further the truth of petitioner's contention that the Supreme Court in *Virginia v. Rives*, supra, did not make legislative denial of equal rights an inflexible prerequisite to removal but instead required only substantial [fol. 873] certainty of such denial, it is clear from the quotations above and cases cited that the decision was not so regarded by subsequent courts. It also appears that the courts have had difficulty imagining circumstances short of legislative denial of rights which would attain that degree of certainty justifying removal, since no case has been brought to this court's attention where such circumstances have been judicially approved even in hypothesis.

Examination of the petition here compels the conclusion that it does not sufficiently state grounds for removal under 28 U. S. C. § 1443 (1). Even if the petitioner's arrest was carried out as a harassing tactic in furtherance of a policy of discrimination, that fact does not entitle petitioner to remove because such practices are not only not required by state law but indeed would be gross violations of that law. The evil complained of (if it actually exists) amounts to "criminal misuse of state law" by public officials which is

not such a denial or disability to enforce in the state courts petitioner's equal civil rights as would support removal. Her remedy is in the state courts. *Virginia v. Rives*, supra.

The ordinance* upon which petitioner's prosecution rests is not discriminatory so as to support removal. It is readily [fol. 874] apparent that this ordinance does not discriminate against petitioner, any class of which she is a member, or any class at all. The restrictions on various types of recording and transmission activities are made applicable to "any person, or persons." Clearly no violation of the equal protection clause of the Fourteenth Amendment appears on the face of the ordinance.

The existence of public hostility to petitioner which will deprive her of a fair trial is not required by a state constitutional provision or statute. In fact, state law provides for change of venue in criminal cases to eliminate that element. Local prejudice against a defendant in the state courts is not an adequate ground for removal. *Rand v. Arkansas*, 191 F. Supp. 20 (W. D. Ark. 1961). Inability to retain local counsel because of such local hostility is again not a deprivation of right traceable to the constitution or laws of Mississippi. It may be noted that the duties of Mississippi attorneys include the following:

* Section 14-8.1, Code of Ordinances of the City of Clarksdale, Mississippi.

(a) It shall be unlawful for any person, or persons, to make voice or other sound recordings or transmissions of voice or other sounds by radio, or other sound media, or to take photographs, still pictures, motion pictures or television pictures within any building belonging to the City of Clarksdale, Mississippi, or any other property belonging to said City, without the prior permission of the board of mayor and commissioners of the City of Clarksdale, Mississippi.

(b) Any persons violating any of the provisions of this section shall be guilty of a misdemeanor and be punishable by a fine of not more than one hundred dollars (\$100.00) or by imprisonment in the City of Clarksdale, Mississippi jail for not more than thirty (30) days, or by both such fine and imprisonment.

It is the duty of attorneys:

.....

(7) Never to reject, for any consideration personal to themselves, the cause of the defenseless or oppressed. Mississippi Code Ann. 1942 (Recompiled) § 8665.

It is not alleged that the practice of segregated seating in state courtrooms is maintained under provisions of the state constitution or statutes or other regulatory provision, and this ground is thus insufficient. For the same reasons, [fol. 875] the alleged practice of improperly addressing Negro witnesses and attorneys in the state courts does not entitle petitioner to bring her case to the federal courts.

The exclusion of Negroes from the elections at which state judges are elected is not ground for removal since there are no state laws which limit the right of Negroes to vote in Mississippi because of their race. *City of Birmingham v. Croskey*, supra. For identical reasons, alleged systematic exclusion of Negroes from service on state juries is insufficient. *Gibson v. Mississippi*, supra; and the requirement of excessive bond in civil rights cases, which is not permitted by state law, does not serve to bring the case to this court.

In summary, the existence of these illegalities, even if true, is neither required, permitted or condoned by the laws of Mississippi and under the settled law it would be improper for this court to find that petitioner will be denied or unable to enforce in the courts of the state her equal civil rights as a United States citizen. Insofar as it depends upon 28 U. S. C. § 1443 (1), the removal was improvident and this court is without jurisdiction.

II.

The petition also alleges that petitioner is being prosecuted for acts done under color of authority derived from laws providing for equal rights, and thus that she is entitled to remove under 28 U. S. C. § 1443 (2). [fol. 876] Petitioner invokes all statutory and constitutional provisions which can be said to provide for equal

rights, but she lays emphasis in her brief on 42 U. S. C. §§ 1981, 1983 and 1985. It is contended that these statutes create or protect certain equal civil rights; that while engaged in the campaign for the promotion of the equal civil rights of Negroes in Mississippi, she was herself exercising rights which are protected by those statutes; that both her general activities in that campaign and the specific act for which she was arrested were acts under the color of authority of laws providing for equal rights; and that she is being prosecuted "because of her activities as a COFO worker. These activities have subjected her to the hostility of state and local government officials and law enforcement authorities and have resulted in a denial of her right to conduct herself peaceably and quietly on public property." In short, she contends that she was exercising rights under the various civil rights statutes, thereby incurring the hostility of state and local officials, so that such officials were motivated to prosecute her for those acts and that "Congress has authorized removal to the federal courts of any state prosecution brought against individuals for the exercise of rights under the various civil rights acts."

The specific issue here is whether petitioner has alleged facts from which it can be said that she is being prosecuted for acts done under color of authority derived from any law providing for equal civil rights, within the meaning of 28 U. S. C. § 1443 (2). "Color of authority" is a phrase [fol. 877] of art in the law. It is defined in 15 C. J. S., Color, p. 235, as follows:

Color of authority. Authority derived from an election or appointment, however irregular or informal, so that the incumbent be not a mere volunteer.

From this accepted meaning of this phrase, removal is not available under subsection (2) unless the act for which the state prosecution is brought was done in at least a quasi-official capacity derived from a law providing for equal rights. Neither the constitution nor the statutes cited by petitioner purport to grant her any authority to act in any official capacity so as to entitle her to remove a state prose-

ention instituted because of such acts. The mere exercise of rights created or protected by federal civil rights statutes does not spread a cloak of immunity from state prosecution over persons who, by the acts involved in such exercise of their equal civil rights, also violate state law.

The almost total absence of judicial interpretation of subsection (2) lends credence to this view. During its century of existence, subsection (2) and its predecessors have not been regarded by the bench and bar as authorizing removal in the circumstances here. This inference is compelled when consideration is given to the fact that in most, if not all, of the removal cases cited earlier in this opinion, the petitioner there had equally as good grounds as petitioner here to invoke subsection (2), if petitioner's view of the statute is valid. Yet, the point was never raised until recently. Obviously, the legal profession has regarded subsection (2) as being unavailable to private individuals who [fol. 878] are being prosecuted for acts which are claimed to amount to exercise of their federal equal civil rights.

The difficulty with petitioner's construction of the statute is that it proves too much. Adoption of petitioner's view would so extend the operation of subsection (2) that it would eliminate, as a practical matter, the functions of the state courts. For example, the first statute cited by petitioner, 42 U. S. C. § 1981, reads as follows:

All persons within the jurisdiction of the United States shall have the same right . . . to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other.

It must be noted first that the guilt or innocence of the petitioner is immaterial. That issue would not be open for consideration until it had first been determined that this court had jurisdiction. With this in mind, it must be ob-

served that § 1981 grants to all persons within the jurisdiction of the United States a guaranty of equal protection of the law. In effect, it is the implementing statute of the equal protection clause of the Fourteenth Amendment. Under petitioner's view, any person who exercised a right so protected, and for such exercise was prosecuted in the state court, would be entitled to remove under subsection (2). Thus, the "laws and proceedings for the security of per-[fol. 879] sons" to which all persons shall have the same right generally include the right to use necessary force in self defense when attacked. If the mere exercise of such a right entitles one to removal of a state prosecution brought because of that act, then any person charged with assault and battery who relied on self defense as a defense would be entitled to remove, regardless of his guilt or innocence.

Such a construction seems absurd. Perhaps petitioner would modify it by reading in limitations to prevent the extreme application illustrated. Such limitations might include the existence of local prejudice against the petitioner, proof of discriminatory practices of local authorities against the class of which petitioner is a member, the character of the activity in which petitioner was engaged when the alleged crime was committed, or even the motivation of the prosecutor in bringing the action. Insofar as such modifications suggest that removal would be available to only a particular class of state criminal defendants, possible issues of constitutional propriety are raised. It is enough to say, however, that such modifications are so speculative with respect to the probable intent of Congress that they should issue from that branch of the government rather than this.

This court is of the opinion that Congress did not intend such a strained, impractical construction of the statute, but rather intended to follow the accepted use of the phrase, "color of authority", granting the right of removal to per-[fol. 880] sons acting in an official or quasi-official capacity.

Since it is apparent that petitioner was acting only as a private individual, the removal of her prosecution from

the Police Court of the City of Clarksdale to this court on the basis of subsection (2) was also improvident and this court is without jurisdiction.

It follows that the motion to remand is well taken and will be sustained.

An order will be entered in accordance with this opinion to remand this case to the court from which it was improperly removed.

This the day of December, 1964.

Claude F. Clayton, District Judge.

[fol. 881]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

No. GCR 6435

CITY OF GREENWOOD, MISSISSIPPI,

v.

DOROTHY WEATHERS, et al.

ORDER AMENDING MEMORANDUM OPINION AND ORDER OF
DECEMBER 30, 1964—January 5, 1965

It appearing to the court that the Memorandum Opinion and Order entered in this cause on 30 December, 1964, erroneously treated the defendants as if they were free on bail set by the state court, when in fact they were free on bail set by this court, it is,

Ordered:

1) That the last sentence of paragraph 4) of the said Memorandum Opinion and Order shall be, and the same hereby is, deleted insofar as it applies to this cause.

2) That paragraph 5) of the said Memorandum Opinion and Order shall be, and the same hereby is, renumbered as paragraph 7).

3) That new paragraphs, numbered 5) and 6) shall be, and the same hereby are, inserted in the correct order, to read as follows:

5) That the defendants, now at liberty on bail in amounts fixed by this court, bonds for which were posted in and approved by this court, are ordered and directed to surrender themselves to the Chief of Police (Marshal) of the City of Greenwood, Mississippi, no later than ten days from the date of expiration of [fol. 882] the stay herein granted.

6) That upon the surrender of a defendant as required by paragraph 5) hereof, all liability of that defendant, and sureties on his bail bond shall thereupon be extinguished, but otherwise the bail bonds of defendants shall remain in full force and effect.

This the 5th day of January, 1965.

Claude F. Clayton, District Judge.

[fol. 883]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION
No. GCR 6451

CITY OF GREENWOOD, MISSISSIPPI,

v.

JOHN HANDY.

MEMORANDUM OPINION AND ORDER—December 30, 1964

This cause originated in this court by the filing of a petition pursuant to 28 U. S. C. § 1443 to remove a criminal prosecution from the Police Court of the City of Greenwood, Mississippi. The City filed a motion to remand, and the defendant filed a motion for an order granting an evidentiary hearing. These motions are now before the court.

Contrary to the *Rules Governing the Removal of Criminal Prosecutions* promulgated by an order of this court on 27 August, 1964, defendant has not furnished the court with a copy of the affidavit upon which the state prosecution is based, nor an affidavit of counsel setting forth the steps taken to procure such a copy and the reasons for the failure to obtain such a copy. This defect is pointed up by the fact that defendant's petition alleges that he is charged "with the alleged offense of inciting to riot, believed to be a Mis-[fol. 884] sissippi Statute No. 8576," while counsel for the City state in their brief that the offense is of common-law origin. The vagueness of the various papers in the record prevents the court from knowing precisely with what offense defendant is charged.

The burden is on the defendant as a petitioner for removal, however, to present sufficient grounds for removal,

and defendant has not pointed to any state constitutional or statutory provision which is discriminatory on its face so that it can be found that defendant will be deprived of his equal civil rights on trial in the state court. A search by the court of those statutes which may relate to the offense of inciting to riot has produced no such discriminatory statute, and obviously if, as the City contends, the offense is of common law origin, there could be no basis for saying the legal source of the charge is discriminatory. Therefore, this case is controlled by the decision of this court in *City of Clarksdale v. Gertge*, No. DCR6448 (December 23, 1964), and there is no basis for this court's assumption of jurisdiction.

In this view of the law, an evidentiary hearing on the allegations of fact contained in the opinion, which amount to allegations of discriminatory application of non-discriminatory state laws, would serve no purpose. Defendant's motion to this end will be overruled.

The removal of this case was improvident and this court is without jurisdiction. Therefore, it is,

[fol. 885] Ordered:

- 1) That this cause, which was improperly filed by the defendant and received by the Clerk with the style of the case including the State of Mississippi as a party, when the style should have been identical to the style of the same case in the state court, shall be styled as in this Memorandum Opinion and Order.
- 2) That the Clerk shall change the style of the files and records in this cause to conform to the style of this order.
- 3) That the motion of John Handy for an order granting and fixing a date for hearing and presentation of proofs, shall be, and the same hereby is, overruled.
- 4) That the motion to remand shall be, and the same hereby is, sustained.

5). That this cause shall be, and the same hereby is, remanded to the Police Court of the City of Greenwood, Mississippi. This remand, however, shall be, and the same hereby is, stayed for a period of ten days, provided that if notice of appeal is filed during that period, the stay shall be effective until final disposition of the cause on appeal. Defendant, John Handy, is hereby notified that upon expiration of such a stay, he must abide by the terms and conditions of the bond previously posted by him with the Police Court of the City of Greenwood, Mississippi.

[fol. 886] 6) That the Clerk of this court is directed to serve promptly on the defendant, John Handy, on all counsel of record, and upon the Clerk of the Police Court of the City of Greenwood, Mississippi, certified copies of this opinion and order by certified mail, and to note such service on the docket.

This the 30th day of December, 1964.

Claude F. Clayton, District Judge.

[fol. 887]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

GREENVILLE DIVISION

No. GCR6453

CITY OF GREENWOOD,

v.

JESSIE HARRISON.

No. GCR6454

CITY OF GREENWOOD,

v.

ANNA RUTH TURNER.

MEMORANDUM OPINION AND ORDER—December 30, 1964

These cases are identical in every respect and will be treated together. They originated in this court by the filing of petitions pursuant to 28 U. S. C. § 1443 to remove criminal prosecutions from the Police Court of the City of Greenwood. In each case, Greenwood has filed a motion to remand and the defendants have filed motions for orders granting and fixing a date for hearing and presentation of proofs. These motions are now before the court.

Defendants have not complied with the *Rules Governing the Removal of Criminal Prosecutions* promulgated by order of this court on 27 August, 1964, in that they filed neither a copy of the affidavit upon which the state prosecution is based, nor, in the alternative, an affidavit by [fol. 888] counsel showing the steps taken to procure such a copy and the reasons for failure to obtain one. The only

source of information available to the court is the allegation of the petitions that defendants are charged "with the alleged offense of Disturbance in a Public Place, believed to be an ordinance of the City of Greenwood." In petitioning for removal, the burden is on the defendant to show adequate grounds therefor, and under the settled law, removal is not available under 28 U. S. C. § 1443 unless some state constitutional or statutory provision is discriminatory on its face so as to deprive the defendant of his equal civil rights on trial in the state court. Defendants have failed to inform the court by the required copy of the affidavit, or by any other means, of any ordinance of the City of Greenwood or constitutional or statutory provision of the State of Mississippi which would bring these cases within the rule stated above. The cases are therefore governed by the decision of this court in *City of Clarksdale v. Gertge*, No. DCR6448 (December 23, 1964), a copy of which is attached hereto.

Under this view of the law, the allegations of the petition cannot affect the result, even if true. An evidentiary hearing would thus serve no useful purpose and defendants' motions to this end must be overruled.

These cases were improvidently removed and this court is without jurisdiction. Therefore, it is,

Ordered:

[fol. 889] 1) That these causes, which were improperly filed by the defendants and received by the Clerk with the style of the cases including the State of Mississippi as a party, when the style should have been identical to the style of the same cases in the state court, shall be styled as in this Memorandum Opinion and Order.

2) That the Clerk shall change the style of the files and records in these causes to conform to the style of this order.

3) That the motions of Jessie Harrison and Anna Ruth Turner for orders granting and fixing a date for hearing and presentation of proofs shall be and the same hereby are, overruled.

4) That the motions to remand shall be, and the same hereby are, sustained.

5) That these causes shall be, and the same hereby are, remanded to the Police Court of the City of Greenwood, Mississippi. This remand, however, shall be, and the same hereby is, stayed for a period of ten days, provided that if notice of appeal is filed during that period, the stay shall be effective until final disposition of the causes on appeal. Defendants, Jessie Harrison and Anna Ruth Turner, are hereby notified that upon expiration of such a stay, they must abide by the terms and conditions of the bonds under which they were released from custody by the Police Court of the City of Greenwood, Mississippi.

[fol. 890] 6) That the Clerk of this court is directed to serve promptly on the defendants, on all counsel of record, and upon the Clerk of the Police Court of the City of Greenwood, Mississippi, certified copies of this order by certified mail, and to note such service on the docket.

This the 30th day of December, 1964.

Claude F. Clayton, District Judge.

[fol. 891]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

GREENVILLE DIVISION

No. GCR6462

CITY OF GREENWOOD,

v.

LAURA MCGHEE.

MEMORANDUM OPINION AND ORDER—December 30, 1964

This case originated in this court by the filing of a petition pursuant to 28 U. S. C. § 1443 to remove a criminal prosecution from the Police Court of the City of Green-

wood, Mississippi. The City filed a motion to remand and the defendant filed a motion for an order granting a hearing for the presentation of proof in support of the factual allegations of the removal petition. These motions are now before the court.

The affidavit upon which the Police Court prosecution is based charges defendant with assault and battery, in violation of the ordinances of the City of Greenwood. The ordinance in question cannot be said to be discriminatory upon its face, nor does an examination of all the papers in the record before the court produce any statutory or constitutional provision of the State of Mississippi which will deprive defendant of her equal civil rights on the trial of this case. This case is therefore governed by the [fol. 892] opinion of this court in *City of Clarksdale, Mississippi v. Gertge*, No. DCR6448 (December 23, 1964).

The allegations of fact in the petition are, in substance, allegations that defendant will be deprived of her equal civil rights on trial in the Police Court as a result of discriminatory application of non-discriminatory state laws. Since, as noted in the *Gertge* opinion, such circumstances, even if true, would not authorize removal, no purpose can be served by granting an evidentiary hearing, and the defendant's motion to this end must be denied.

It follows that removal was improvident and this court is without jurisdiction. Therefore, it is,

Ordered:

- 1) That the motion of Laura McGhee for an order granting and fixing date for hearing and presentation of proofs shall be, and the same hereby is, overruled.
- 2) That the motion of the City of Greenwood to remand shall be, and the same hereby is, sustained.
- 3) That this cause shall be, and the same hereby is, remanded to the Police Court of the City of Greenwood, Mississippi. Defendant, Laura McGhee, is hereby notified that she must abide by the terms and conditions of the bond previously posted by her with the Police Court of the City of Greenwood, Mississippi.

4) That the Clerk of this court is directed to serve promptly on the defendant, Laura McGhee, on all counsel [fol. 893] of record, and upon the Clerk of the Police Court of the City of Greenwood, Mississippi, certified copies of this opinion and order by certified mail, and to note such service on the docket.

This the 30th day of December, 1964.

Claude F. Clayton, District Judge.

[fol. 894]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 22597

DOROTHY WEATHERS, et al., Appellants,

versus

CITY OF GREENWOOD, MISSISSIPPI, Appellee.

On Motion to Dismiss Appeal and for Summary Reversal
Before Hutcheson, Rives and Bell, Circuit Judges.

OPINION, PER CURIAM—Filed July 20, 1965

The motion of appellee to dismiss the appeal is Denied.

On the motion of the appellants for summary reversal, it appears that the issues determined in Fifth Circuit No. 21655, *Willie Peacock, et al. v. The City of Greenwood, Mississippi*, decided June 22, 1965, are identical with the issues on this appeal. It follows from the decision in *Peacock* that the district court erred in remanding these cases to the State court without a hearing. The orders of remand are therefore vacated and the case is remanded for a hearing on the truth of the appellants' allegations.

Vacated and Remanded.

[File endorsement omitted]

[fol. 895]

SUPREME COURT OF THE UNITED STATES

No., October Term, 1965

 WILLIE PEACOCK, et al., Petitioners,

vs.

CITY OF GREENWOOD, MISSISSIPPI.

 ORDER EXTENDING TIME TO FILE PETITION FOR
WRIT OF CERTIORARI—September 20, 1965

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 5, 1965.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 20th day of September, 1965.

[fol. 896]

SUPREME COURT OF THE UNITED STATES

No. 649, October Term, 1965

 WILLIE PEACOCK, et al., Petitioners,

v.

THE CITY OF GREENWOOD, MISSISSIPPI.

 ORDER ALLOWING CERTIORARI—January 17, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

The case is consolidated with No. 471 and a total of two hours is allotted for oral argument. The cases are set for oral argument immediately following No. 147.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 897]

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

Nos. 471 and 649 CONSOLIDATED

THE CITY OF GREENWOOD, MISSISSIPPI,
Petitioner & Cross-Respondent,

vs.

WILLIE PEACOCK, et al., Respondents &
Cross-Petitioners.

On Consolidated Petition and Cross-Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

STIPULATIONS OF COUNSEL OF PORTIONS OF THE RECORD
CONSIDERED UNNECESSARY FOR PRINTING—Filed January
24, 1966

It is hereby stipulated and agreed between the attorneys for the respective parties in the above styled and consolidated causes that of the two transcripts of the records certified by the Court below in those causes styled in the Court below "WILLIE PEACOCK, ET AL, vs. THE CITY OF GREENWOOD, MISSISSIPPI" and "DOROTHY WEATHERS, ET AL, vs. THE CITY OF GREENWOOD, MISSISSIPPI," (the latter case being hereinafter referred to as the Weathers case") and being numbered 21655 and 22596, respectively, on the docket of the Court below, and which two causes comprise this con-

solidated case in the United States Supreme Court, it is not necessary for the consideration by this Court of the questions presented on the consolidated petition and cross-petition for writ of certiorari to the court below for the following portions of the record in the Weathers case to be printed, to-wit:

[fol. 898] (1) Any of the following entitled documents which might appear in those causes numbered GCR 6435 through and including GCR 6448, GCR 6451, GCR 6453, GCR 6454 and GCR 6462 on the docket of the United States District Court for the Northern District of Mississippi (Greenville Division) and being all of those United States District Court causes which were consolidated by said United States District Court for appeal to the United States Court of Appeals for the Fifth Circuit and which causes comprise the Weathers case (hereinafter these District Court cases that were consolidated to make up the Weathers case will be referred to simply by their docket number in the United States District Court, for example GCR 6435), to-wit:

- (a) Documents entitled "Appearance of Associate Counsel;
- (b) Orders of the said United States District Court directing issuance of writ of habeas corpus;
- (c) Orders fixing bail bonds;
- (d) Notices of removal of action;
- (e) Documents entitled "Application for writ of habeas corpus cum causa and admission to bail";
- (f) Documents entitled "Motion for an order granting and fixing date for hearing and presentations of proofs in support of the factual allegations contained in the removal petitions" (and the memorandum in support of said motion, if made a part of the record);
- (g) Notices of appeal;
- (h) Documents entitled "Substitution and appearance of Counsel", and the

- (i) Motions to consolidate filed in the said United States District Court.

(2) The petitions for removal and the motions to remand filed in the United States District Court in the following said causes, being all of the United States District Court [fol. 899] causes comprising the Weathers case, except cause numbered GCR 6435, to-wit: those causes numbered GCR 6436 through and including GCR 6448, GCR 6451, GCR 6453, GCR 6454, and GCR 6462. (In other words in the Weathers case only print the petition for removal and motion to remand in cause GCR 6435.)

It is further expressly agreed and stipulated between said attorneys for said parties: that all of the petitions for removal and all the motions to remand in the Weathers case are on mimeographed forms; that all the motions to remand in the Weathers case are identical except for the names of the defendants in the style of the cases, the docket numbers, the names of the lawyers on whom service of a copy of said motion was made, and the date; and that all the petitions for removal in the Weathers case are identical except for the names of the defendants, the allegations contained in Part B of each of said petitions concerning the amount of the bail bond and the date set for trial, the names of the lawyers for the petitioners, and except in the following particulars, to-wit:

1. In the petitions for removal in causes numbered GCR 6437, GCR 6438, GCR 6441 and GCR 6445 the allegations in that paragraph which is numbered B-2 in all the other petitions for removal are omitted; and in causes numbered GCR 6437 and GCR 6438, those paragraphs which appear in all the other petitions for removal as paragraphs C-4a and C-4d are deleted.

2. In the petitions for removal in the Weathers case, the allegations contained in those paragraphs which appear as A-2 and B-1 in each of said petitions differ, and, therefore, said allegations contained in each of these para-

graphs in each of said petitions for removal are set out below verbatim, to-wit:

In Cause GCR 6435, paragraph A-2 recites:

"Petitioners are charged in said criminal proceedings with the alleged offense of assault and battery"

[fol. 900] And paragraph B-1 recites:

"On July 16, 1964, in the City of Greenwood, Mississippi, at approximately noon M., petitioners in company with several other COFO adherents was engaged at Leflore CO. Courthouse in the activity of peaceful picketing designed to encourage Negroes to register and vote."

(Note to Clerk of United States Supreme Court: It is expressly agreed between said attorneys that this stipulation is to be printed as a part of the record in this case and that paragraphs A-2 and B-1 of each of the petitions for removal in the Weathers case, i. e., in Causes numbered GCR 6435 through and including GCR 6448, GCR 6451, GCR 6453, GCR 6454, and GCR 6462, are to be printed verbatim in this space in the stipulation as printed in the record, the form shown above in the case of the petition for removal in Cause GCR 6435 being utilized. It will not be necessary, however, to print this note as part of the stipulation.)

This the day of , 1966.

Aubrey H. Bell, of Bell & McBee, 115 Howard Street,
Greenwood, Mississippi, Counsel for the City of
Greenwood, Mississippi.

Hardy Lott, of Lott & Sanders, 226 Aven Building,
Greenwood, Mississippi, of Counsel for the City
of Greenwood, Mississippi.

Benjamin E. Smith, of Smith, Waltzer, Jones &
Peebles, 1006 Baronne Building, New Orleans,
Louisiana, Counsel for Each of the Respondents
and Cross-Petitioners.